147 U.S. 147

RECORD, CASE No. 13,649.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~127~~ 98

W. W. JENNINGS, PLAINTIFF IN ERROR,

vs.

THE COAL RIDGE IMPROVEMENT AND COAL COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED SEPTEMBER 24, 1889.

RECORD, CASE No. 13,649.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 427.

W. W. JENNINGS, PLAINTIFF IN ERROR,

vs.

THE COAL RIDGE IMPROVEMENT AND COAL COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 4, 1892.

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1 *Copy of Petition for Writ of Error.*

To the Honorable Joseph P. Bradley, justice of the Supreme Court of the United States:

The petition of W. W. Jennings respectfully showeth—

That your petitioner is a resident of the city of Harrisburg, State of Pennsylvania, and was on the first day of December, 1887, and prior thereto the owner of $20,000 of the first-mortgage registered bonds of the Coal Ridge Improvement & Coal Company, a corporation of the State of Pennsylvania, doing business in the county of Northumberland, in said State, upon which bonds, by the terms thereof, there was due your petitioner upon the first day of December, 1887, six months' interest, amounting to $600.

That by the first section of an act of the General Assembly of Pennsylvania, approved June 30, 1885 (P. L. 193), there was imposed upon all mortgages, etc., in the hands of individual citizens of the State a tax of three mills upon the actual value thereof annually.

That by the fourth section of the said act of 1885 it is enacted "That hereafter it shall be the duty of the treasurer of each private corporation incorporated by or under the laws of this Commonwealth or the laws of any other State or of the United States and doing business in this Commonwealth, upon the payment of any interest on any scrip, bond, or certificate of indebtedness issued by said corporation to residents of this Commonwealth and held by them, to assess the tax imposed and provided for State purposes upon the nominal value of each and every said evidence of debt,"

2 and to deduct from the interest so paid the aforesaid tax of three mills.

That upon demand made by your petitioner for the interest due upon his said bonds the company tendered him a certificate of deposit for $570, being the amount of the interest due upon said bonds less $30, which the company claimed to deduct as a tax of three mills upon the nominal value of said bonds, as required by the said fourth section of the act of June 30, 1885.

That your petitioner returned said certificate of deposit, declining to allow the deduction of the tax, claiming that the bonds were not worth more than seventy-five cents on the dollar, and that it was unfair to require him to pay tax upon their nominal or face value.

That your petitioner brought suit against said company for the recovery of the full amount of said interest in the court of common pleas of Northumberland county, to No. 25 of February term, 1888, of said court.

That by agreement of the parties the said cause was heard by the court without a jury, the court finding both the law and the facts agreeably to the provisions of an act of the General Assembly of Pennsylvania approved April 22, 1874 (P. L. 109), and agreeably to the provisions of which said act your petitioner submitted the following points, *inter alia*, for the answer of the court, which points became part of the record:

"2. The only tax to which bonds and mortgages are made subject

by the act of June 30, 1885, is an annual tax upon the actual value thereof, and before any tax can be lawfully due upon any bond or mortgage there must be a legal assessment or ascertainment of its actual value, with notice to the owner and the right of appeal.

3 There having been no such assessment of the plaintiff's bonds, no tax was due December 1, 1887, and the defendant company was therefore not lawfully authorized to withhold any portion of the interest due by the terms of the bonds and the mortgage securing them."

"5. By the first section of the act of 1885 all bonds, mortgages, &c., owned by residents of Pennsylvania are made taxable at three mills upon their actual value. Under the general laws of the Commonwealth of Pennsylvania all such property is to be assessed at its actual value, with notice to the owner and the right of appeal to the county commissioners, whose action is in turn reviewed by the State board of revenue commissioners, except as to bonds and mortgages issued by corporations created and doing business in Pennsylvania, which are by the provisions of the fourth section of the said act drawn out from the general plan of assessment and required to be assessed arbitrarily at their nominal or par value. By reason of the discrimination thus made between the assessment of mortgages issued by corporations of the State of Pennsylvania and those issued by individuals and foreign corporations, and by reason of the arbitrary assessment of bonds and mortgages issued by Pennsylvania corporations whose actual value is less than their nominal or par value, as in the case of plaintiff, at the same price as other bonds issued by Pennsylvania corporations whose actual value is much greater than their nominal or par value, the said fourth section is in conflict with section one of article XIV of the amendments to the Constitution of the United States, which provides that 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'"

"7. For the reasons stated in point No. 5, the act of 1885 is also in conflict with the provisions of article V of the amendments to the Constitution of the United States, which provides that 'No person shall be * * * deprived of life, liberty, or property without due process of law.'"

"9. As there had been no lawful assessment of plaintiff's bonds, and no tax was due thereon to the Commonwealth of Pennsylvania upon the first day of December, 1887, the act of June 30, 1885, if it required the treasurer of the corporation defendant to retain or withhold any sum whatsoever from the said interest, is void, because in conflict with section 10 of article I of the Constitution of the United States, which forbids the States to pass any law impairing the obligation of contracts."

That, having received evidence and heard argument for and against the claim of your petitioner and the points submitted, as aforesaid, the court of common pleas of Northumberland county

found the facts to be that the actual value of the bonds of
4 the Coal Ridge Improvement & Coal Company is not greater than three-fourths of their par value; that the actual value of corporation securities held by individuals differs from their nominal or par value—in some cases the actual value being above, in others below, par; that the securities issued by foreign corporations not doing business in Pennsylvania and held by residents of Pennsylvania and those issued by individuals and owned in Pennsylvania are assessed at their actual value, and that there are a great many bonds of foreign corporations not doing business in Pennsylvania held by residents of Pennsylvania, the actual value of many of which bonds is much below their par value.

That upon the said facts the said court affirmed the points aforesaid, and found as a conclusion of law that the fourth section of the act of June 30, 1885, is in conflict with article V and section 1 of article XIV of the amendments to the Constitution of the United States, and therefore unconstitutional and void; and thereupon entered judgment against the said company and in favor of your petitioner for $600.

That the said Coal Ridge Improvement & Coal Company by writ of error carried the said cause into the supreme court of Pennsylvania, which court, after full argument, involving a thorough discussion of the questions arising under the Constitution of the United States and set forth in the points submitted by your petitioner for the answer of the court as aforesaid (which points formed part of the record of the said supreme court of Pennsylvania as well as of the court of common pleas of Northumberland county), reversed the
5 judgment of the court of common pleas of Northumberland county and entered judgment in favor of your petitioner for $570 and costs, said judgment having been entered upon the twenty-eighth day of June, 1889.

That the supreme court of Pennsylvania, in which said cause was heard and decided, is the highest court of record and the court of last resort in the Commonwealth of Pennsylvania.

That the judgment of said court is final.

That the judgment of the said court, as already shown, necessarily involved the decision of Federal questions, and that said decision is in favor of the State law and against the immunity claimed by your petitioner under the Constitution of the United States.

Wherefore your petitioner (herewith presenting a bond with security for approval) prays that a writ of error may be allowed to issue to the said supreme court of Pennsylvania to bring up the record to the Supreme Court of the United States for correction in that which violates the Constitution and laws thereof, and that the citation to the defendant may accompany the same; and he will ever pray, &c.

W. W. JENNINGS,
By his attorney, M. E. OLMSTED.

Writ of error allowed as prayed for in the foregoing petition.
August 23, 1889. JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

6 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Pennsylvania, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between W. W. Jennings, plaintiff in error, and The Coal Ridge Improvement and Coal Company, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitu-
7 tion or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 23rd day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court U. S.

August 23rd, 1889.

8 *Copy of Citation.*

THE UNITED STATES OF AMERICA:

To the Coal Ridge Improvement and Coal Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the office of the prothonotary of the supreme court of Pennsylvania for the eastern district, wherein W. W. Jennings is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, this 23rd day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court of U. S.

NORTHUMBERLAND COUNTY, *ss:*

On this 29th day of August, in the year of our Lord one thousand eight hundred and eighty-nine, personally appeared A. C. Stamm, before me, the subscriber, a notary public, resident at Sunbury, Pa., and makes oath that he delivered a true copy of the within
9 citation to S. P. Wolverton, Esq., counsel for the Coal Ridge Improvement & Coal Company, upon the 29th day of August, 1889.

A. C. STAMM.

Sworn to and subscribed the day and year aforesaid, —— —, A. D. 188–.

[SEAL.] GEO. H. NEFF,
Notary Public.

Copy of Bond.

Supreme Court of the United States.

W. W. JENNINGS, Plaintiff in Error,
vs.
COAL RIDGE IMPROVEMENT & COAL COMPANY, Defendant in Error. } No. —.

In error to the supreme court of Pennsylvania, eastern district.
T. 188–.

Know all men by these presents that we, W. W. Jennings and A. C. Stamm, of the city of Harrisburg, county of Dauphin, and State of Pennsylvania, are held and firmly bound unto the Coal Ridge Improvement & Coal Company in the sum of five hundred

dollars ($500), lawful money of the United States of America,
10 to be paid to the said Coal Ridge Improvement & Coal Company, its certain attorney or assigns; to which payment, well and truly to be made, we do bind ourselves and each of us, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the 22nd day of July, A. D. 1889.

Whereas lately, in a court of common pleas in and for the county of Northumberland, judgment was entered against the Coal Ridge Improvement and Coal Company at the suit of W. W. Jennings, of Feb. term, 1888, No. 25, which judgment was afterwards reversed by the supreme court of Pennsylvania, in a certain plea and suit in said court, of Jan'y term, 1888, No. 364, in the eastern district of said court, and the said W. W. Jennings has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of Pennsylvania:

Now, the condition of this obligation is such that if the above-named W. W. Jennings, plaintiff in error, shall prosecute his writ of error with effect and answer all damages and costs if he shall fail to make good his plea, then this obligation is to be void; otherwise to remain in full force and virtue.

W. W. JENNINGS. [SEAL.]
A. C. STAMM. [SEAL.]

Signed, sealed, and delivered in presence of—

WM. HECKERMAN.
RUSSELL BUTLER.

This bond approved for supersedeas August 23rd, 1889.

JOSEPH P. BRADLEY.
Asso. Justice Sup. C't U. S.

11 I hereby certify that the above is a true and correct copy of the bond filed in above-entitled cause.

In testimony whereof I have hereunto set my hand and the seal of said court, *of* Philadelphia, this 10th day of September, A. D. 1889.

[Seal of the Supreme Court of Pennsylvania.]

CHAS. S. GREENE,
Prothonotary.

12 In the Supreme Court of Pennsylvania in and for the Eastern District.

Among the records and proceedings it is thus contained:

Copy of Docket Entries.

January Term, 1888.

THE COAL RIDGE IMPROVEMENT & COAL COMPANY, Plaintiffs in Error,
vs.
W. W. JENNINGS, Def't in Error. } 364

S. P. Wolverton.

Writ of error to the court of common pleas of the county of Northumberland.

Ret'bl. the 3rd Mon. of May, 1888.

Exit Feb. 24, 1888.

May 21, 1888.—Record returned & filed.

Eo die, assignments of error filed.

May 21, 1888.—Continued.

May 27, 1889.—Argued.

June 28, 1889.—Judgment reversed and judgment is now entered for $570 and costs.

Per curiam.

I hereby certify that the above and foregoing is a true and correct copy of the docket entries in the above-entitled case, so full and entire as appears of record in our said supreme court.

In testimony whereof I have hereunto set my hand and seal of said court, at Philadelphia, this 10th day of September, A. D. 1889.

[Seal of the Supreme Court of Pennsylvania.]

CHAS. S. GREENE,
Prothonotary.

Copy of Præcipe.

In the Supreme Court of Pennsylvania for the Eastern District.

13 THE COAL RIDGE IMPROVEMENT AND COAL COMPANY, Defendant Below and Plaintiff in Error,
vs.
W. W. JENNINGS, Pl'ff Below and Def't in Error. } No. 25.

Surwrit of error to the court of common pleas for the county of Northumberland, of Feb'y term, 1888.

Issue writ of error to the court of common pleas for the county of Northd. to remove record and proceedings in a certain action in said court, No. 25, Feb'y term, 1888, in which the said W. W. Jennings

is plaintiff and the said The Coal Ridge Improvement and Coal Co. is defendant.

Returnable to next term, *sec. reg.*

S. P. WOLVERTON,
Att'y for Pl'ff in Error.

Feb'y 23rd, '88.

To Chas. S. Greene, proth'y sup. c't.

COUNTY OF NORTHUMBERLAND, *ss:*

S. P. Wolverton, att'y for pl'ff in error, being duly sworn, saith the writ of error applied for and purchased in above-entitled case is not intended for delay.

S. P. WOLVERTON.

Sworn and subscribed this 23rd day of Feb'y, A. D. 1888.
[SEAL.] S. P. FANSOLD,
Dep. Proth'y.

Copy of endorsement: 364. Jan'y T., '88. The Coal Ridge Improvement and Coal Company *vs.* W. W. Jennings. Præcipe. Filed in supreme court Feb. 24, 1888. Wolverton.

14 *Copy of Recognizance.*

In the Supreme Court of Pennsylvania for the Eastern District.

THE COAL RIDGE IMPROVEMENT AND COAL COMPANY,
Defendant Below and Plaintiff,
vs.
W. W. JENNINGS, Pl'ff Below and Def't in Error. } No. 25.

Surwrit of error to the court of common pleas for the county of Northumberland, of Feb'y term, 1888.

We, The Coal Ridge Imp. & Coal Company, by Israel W. Morris, president; The Real Estate Trust Company, severally acknowledge to owe the above-named defendant in error the sum of fifteen hundred ($1,500) dollars, upon condition that the above-named plaintiff in error prosecute their writ of error with effect, and, if judgment be affirmed or the writ of error be discontinued or non-prossed, that they pay the debt, damages, and costs adjudged or accruing upon such judgment, and all other damages and costs that may be awarded upon such writ of error, and for the return to the court below of the record with the remittitur, or else we will do it for them.

THE COAL RIDGE IMP'T & COAL CO.,
By ISRAEL W. MORRIS, *Prst.* [SEAL.]

15 THE REAL ESTATE TRUST CO.
OF PHILADELPHIA,
By FRANK K. HIPPLE, *President.*

Attest: WILLIAM P. PHILLER, *Secretary.* [SEAL.]

Taken and acknowledged this 24th day of February, A. D. 1888.
CHAS. S. GREENE, *Proth'y.*

Endorsement: C. R. I. & C. Co. *v.* W. W. J. Recognizance. Filed in sup. c't Feb. 24, 1888.

Copy of Record.

STATE OF PENNSYLVANIA, } ss:
Northumberland County, }

[SEAL.] Among the records and proceedings enrolled in the courts of common pleas in and for said county, *inter alia*, it is thus contained:

Appearance Docket Entry.

February Term, A. D. 1888.

W. W. JENNINGS
vs. } 25.
COAL RIDGE IMPROVEMENT AND COAL COMPANY.

M. E. Olmstead; S. P. Wolverton.
Summoned in assumpsit.
December 7, 1887, issued; ret'ble 2nd Monday of January, 1888. Same day statement of plaintiff's claim filed; claim, $600.00; interest from Dec. 1, 1887. Same day the plaintiff enters *ex parte* rule to take depositions on ten days' notice. December 9, 1887, by
16 paper filed, S. P. Wolverton, Esq., appears for the defendant. December 10, 1887, service of summons accepted by S. P. Wolverton, attorney for defendant. Dec. 16, 1887, affidavit of defence filed. December 23, 1888, depositions of W. W. Jennings, plaintiff, *et al.* filed. Same day, by plea filed, the defendant pleads non assumpsit at issue. December 23, 1887, by agreement filed this day, it is agreed by and between counsel for plaintiff and defendant that a trial by jury be dispensed with in this case, and that the same be submitted to the decision of the court, to be heard and determined under the provisions of an act entitled "An act to provide for the submission of civil cases to the decision of the court, and to dispense with trial by jury," approved the 22nd day of April, 1874, subject, however, to a writ of error, as in other cases, at the option of either party. January 5, 1888, plaintiff's points filed. February 10, 1888, opinion and decision of C. A. Mayer, P. J. of 25th judicial district of Pennsylvania, presiding, filed. Same day notice of the filing sent to counsel for plaintiff and defendant. February 15, 1888, exceptions to finding and conclusions of the court filed; and now, February 23, 1888, by endorsement on the back of the exceptions, the exceptions are overruled, and it is ordered that judgment be entered in favor of the plaintiff and against the defendant, The Coal Ridge Improvement and Coal Company, for the sum of six hundred dollars ($600.00). By the court: C. A. Mayer, P. J. of the

25th judicial district. Judgment accordingly in favor of the plaintiff and against the defendant for the sum of six hundred dollars ($600.00). H. F. Mann, prothonotary. February 25, 1888, writ of error from the supreme court, eastern district of Pennsylvania, received and filed.

17 *Copy of Præcipe for Summons.*

W. W. JENNINGS
vs.
COAL RIDGE IMPROVEMENT & COAL COMPANY.
} No. 25. February Term, 188–. In the Court of Common Pleas of Northumberland County.

To the prothonotary of said county:

Issue summons in an action of assumpsit, returnable to the first return day of said court.

M. E. OLMSTED,
Attorney for Plaintiff.

December 7, 1887.

Endorsement: No. 25. February term, 1888. W. W. Jennings *vs.* Coal Ridge Improvement & Coal Co. Præcipe for summons. Filed Dec. 7, 1887. H. F. Mann, prothonotary.

Copy of Summons in Assumpsit.

Summons.

NORTHUMBERLAND COUNTY, *ss:*

The Commonwealth of Pennsylvania to the sheriff of North'd Co., Greeting:

We command you that you summon Coal Ridge Im-
[SEAL.] provement and Coal Company to be and appear before our court of common pleas, to be holden at Sunbury, in and for said county, on the second Monday of January next, there to answer W. W. Jennings of a plea in assumpsit.

18 Hereof fail not, and have you then and there this writ.

Witness the Honorable William M. Rockefeller, Esq., president judge of our said court, the seventh day of December, in the year of our Lord one thousand eight hundred eighty-seven (1887).

S. P. FANSOLD,
Deputy Prothonotary.

Endorsement: No. 25. February term, 1888. W. W. Jennings *vs.* Coal Ridge Improvement and Coal Company. Summons in assumpsit. Dec. 10th, 1887. I hereby accept service of the within writ for the defendant with the same effect as if the same had been served according to law, and acknowledge to have rec'd a copy of the statement filed. S. P. Wolverton, att'y for def't. V. C. K. 2, 80. M. E. Olmstead. Dec. 10th, 1887. Service of this writ accepted. S. P. Wolverton, att'y for defendants. So answers C. L. Kremer, deputy sheriff.

Copy of Præcipe for Rule to Take Dep.

W. W. JENNINGS *vs.* COAL RIDGE IMPROVEMENT & COAL COMPANY.	No. 25. February Term, 1888. In the Court of Common Pleas of Northumberland County.

To the prothonotary of said county:

In the above-entitled case please enter rule to take depositions on the part of the plaintiff on ten days' notice.

M. E. OLMSTEAD,
Attorney for Plaintiff.

December 7, 1887.

Endorsement: No. 25. February term, 1888. W. W. Jennings *vs.* Coal Ridge Improvement & Coal Company. Præ. for rule to take dep. Filed Dec. 7, 1887. H. F. Mann, prothonotary.

19 *Copy of Statement.*

W. W. JENNINGS *vs.* COAL RIDGE IMPROVEMENT & COAL COMPANY.	No. 25. February Term, 1888. In the Court of Common Pleas of Northumberland County. Action of Assumpsit.

Plaintiff's statement.

The plaintiff's demand in the above-stated action is for six hundred dollars ($600), with interest thereon from the first day of December, 1887, the said six hundred dollars ($600) being the semi-annual interest due December 1, 1887, upon and in accordance with the terms of forty (40) registered bonds, numbered from one (1) to forty (40), both inclusive, of the denomination of five hundred dollars ($500) each, and aggregating twenty thousand dollars ($20,000), issued by The Coal Ridge Improvement and Coal Company, defendant, upon the first day of June, 1874, which said bonds were prior to and upon the said first day of December, 1887, owned by and duly registered upon the books of the said defendant in the name of W. W. Jennings, plaintiff, the said twenty thousand dollars ($20,000) being part of a loan of two hundred thousand dollars ($200,000) secured by mortgage of the said company, dated February 16, 1874, and duly recorded in the office of the recorder of deeds of Northumberland county, it being in said mortgage and by the terms of said bonds provided that interest thereon shall be paid at the rate of six (6) per cent. per annum, payable semi-annually upon the first days of June and December in each year. The said interest,
20 amounting to six hundred dollars, due December 1, 1887, not having been paid, this suit is brought for its recovery.

M. E. OLMSTED,
Attorney for Plaintiff.

Endorsement: No. 25. February term, 1888. W. W Jennings *vs.* Coal Ridge Improvement & Coal Company. Statement. Filed Dec. 7, 1887. H. F. Mann, prothonotary.

Copy of Prae. for Appearance.

In the Court of Common Pleas of Northumberland County.

W. W. JENNINGS
vs.
COAL RIDGE IMPROVEMENT & COAL CO. } No. 25. Feb'y Term, 1888.

Please enter my appearance for the defendant.

S. P. WOLVERTON,
Att'y for Def't.

To H. F. Mann, prothonotary.

—— —, 18—.

Endorsement: No. 25. February term, 1888. W. W. Jennings *vs.* Coal Ridge Improvement & Coal Company. Præc. for appearance. Filed Dec. 9, 1887. H. F. Mann, prothonotary.

21 *Copy of Affidavit of Defence.*

In the Court of Common Pleas of Northumberland County.

W. W. JENNINGS
vs.
COAL RIDGE IMPROVEMENT AND COAL COMPANY. } No. 25. February Term, 1888.

NORTHUMBERLAND COUNTY, *ss:*

Personally appeared before me, the subscriber, a notary public in and for the city of Philadelphia, W. C. Alderson, who, being duly sworn according to law, says he is the treasurer of The Coal Ridge Improvement and Coal Company, defendant in the above-stated case, and that the said defendant has a just and legal defence to a part of the plaintiff's claim in the above-stated suit, the nature and character of which is that under the fourth section of an act of the General Assembly of the State of Pennsylvania, approved June 30th, 1885, entitled "A further supplement to an act entitled An act to provide revenue by taxation," approved the seventh day of June, one thousand eight hundred and seventy-nine, it is made the duty of the Coal Ridge Improvement and Coal Company to collect from the holders of the bonds three mills on the dollar of par or face value thereof and to pay the same to the treasurer of the State as therein required; which section is as follows:

"SECTION 4. That hereafter it shall be the duty of the treasurer of each private corporation, incorporated by or under the laws of this Commonwealth, or the laws of any other State, or of the United States, and doing business in this Commonwealth, upon the payment

of any interest on any scrip, bond, or certificate of indebted-
22 ness issued by said corporation to residents of this Common-
wealth, and held by them to assess the tax imposed and provided for State purposes upon the nominal value of each and every of said evidence of debt, and to report on oath, annually on the first Monday of November, to the auditor general the amount of the indebtedness of the corporation owned by residents of this Commonwealth, as nearly as the same can be ascertained; and it shall be his further duty to deduct three mills on every dollar of the interest paid as aforesaid and return the same into the State treasury, within fifteen days after the thirty-first day of December in each year; and his compensation for his services shall be the same that city and borough treasurers receive for similar services; and for every failure to assess and pay said tax and make report as aforesaid, the auditor general shall add ten per centum as a penalty to the amount of the tax; in payment of said tax by a corporation the bonds, certificates or other evidence of indebtedness issued by it shall be exempt from all other taxation in the hands of the holders of the same."

That the plaintiff is the holder of bonds of the defendant of the par value of twenty thousand dollars, on which there was due and payable a semi-annual installment of interest on the first day of December, amounting to the sum of six hundred dollars, in accordance with the terms of the said bond; that on the first day of December the defendant corporation tendered to the plaintiff in payment thereof five hundred and seventy dollars, being the amount of said interest less three mills on the par value of the said bonds, as required by the said act of assembly, which was refused by the said plaintiff, he declining to receive less than the full amount of
the said interest, six hundred dollars, less three mills, upon
23 the actual value of said bonds, which he claimed was only seventy-five cents on the dollar of the par value thereof.

The deponent further says that under the said act the defendant is advised that it was required to deduct three mills on the par value of the said bonds as a tax for State purposes, and therefore offered to pay the said plaintiff the said interest, less the State tax.

W. C. ALDERSON.

Sworn & subscribed before me December 15th, 1887.

[SEAL.] J. HENRY WILLIAMS,
Notary Public.

Endorsement: No. 25. February T., 1888. W. W. Jennings *v.* Coal Ridge Improvement & Coal Company. Aff. of def. Filed Dec. 16, 1887. H. F. Mann, prothonotary. Wolverton.

Copy of Plaintiff's Points.

W. W. JENNINGS
vs.
COAL RIDGE IMPROVEMENT AND COAL COMPANY.

No. 25. February Term, 1888. In the Court of Common Pleas of Northumberland County.

24 Plaintiff's points.

The following points are submitted for the answer of the court, as provided by section two of the act of April 22, 1874 (P. L., 109):

1. By the fourth section of the act of June 30, 1885, the defendant was authorized to deduct from interest due to plaintiff only a tax of three mills upon said interest.

2. The only tax to which bonds and mortgages are made subject by the act of June 30, 1885, is an annual tax upon the actual value thereof, and before any tax can be lawfully due upon any bond or mortgage there must be a legal assessment or ascertainment of its actual value, with notice to the owner and the right of appeal. There having been no such assessment of the plaintiff's bonds, no tax was due December 1, 1887, and the defendant company was therefore not lawfully authorized to withhold any portion of the interest due by the terms of the bonds and the mortgage securing them.

3. The first section of the act of June 30, 1885, renders all mortgages, bonds, &c., taxable at three mills on their actual value. Mortgages issued by individuals and mortgages issued by corporations not doing business in Pennsylvania, but owned by residents of Pennsylvania, are assessed, under the general laws of the Commonwealth, at their actual value, with notice to the owner of the property and the right of appeal; but by the fourth section of the act of 1885 bond- and mortgages issued by corporations of the State of Pennsylvania, including those owned by the plaintiff, are required to be assessed arbitrarily at their nominal or par value, with no notice to the holder and no right of appeal. This discrimination in the mode of assessment of different subjects of the same class is in violation of section one of article IX of the constitution of Pennsylvania, which requires that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the same."

25

4. By the fourth section of the act of 1885 all bonds and mortgages issued by corporations of the State of Pennsylvania are required to be assessed and taxed arbitrarily upon their nominal value without notice to the owner or the right of appeal. By reason of such arbitrary assessment the mortgage bonds owned by plaintiff whose actual value is at least twenty-five per cent. below their nominal value, as well as all other bonds issued by corporations of Pennsylvania and whose actual value is less than their nominal value, are required to pay the same tax as other bonds issued by corporations of Pennsylvania whose actual value is much above their nominal or par value, in some instances being nearly double the actual value of defendant's bonds. By reason of its requiring such arbitrary assessment the act

is in conflict with section one of article IX of the constitution of Pennsylvania, which requires that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the same."

5. By the first section of the act of 1885 all bonds, mortgages, &c., owned by residents of Pennsylvania are made taxable at three mills upon their actual value. Under the general laws of the Commonwealth all such property is to be assessed at its actual value, with notice to the owner and the right of appeal to the county commissioners, whose action is in turn reviewed by the State board of revenue commissioners, except as to bonds and mortgages issued
26 by corporations created by or doing business in Pennsylvania, which are by the provisions of the fourth section of the said act drawn out from the general plan of assessment and required to be assessed arbitrarily at their nominal or par value. By reason of the discrimination thus made between the assessment of mortgages issued by corporations of the State of Pennsylvania and those issued by individuals and foreign corporations, and by reason of the arbitrary assessment of bonds and mortgages issued by Pennsylvania corporations whose actual value is less than their nominal or par value, as in the case of plaintiff, at the same price as other bonds issued by Pennsylvania corporations whose actual value is much greater than their nominal or par value, the said fourth section is in conflict with section one of article XIV of the amendments to the Constitution of the United States, which *proves* that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the full protection of the laws."

6. For the reasons stated in point 5 the act of 1885 is in violation of section 9 of article I of the constitution of Pennsylvania, which provides that no person shall be deprived of his life, liberty, or property, unless by the judgment of his peers or the law of the land.

7. For the reasons stated in point No. 5 the act of 1885 is also in conflict with the provisions of article V of the amendments to
27 the Constitution of the United States, which provides that "no person shall be * * * deprived of life, liberty, or property without due process of law."

8. For the reasons stated in point No. 5 the act of 1885 is in conflict with section 10 of article I of the constitution of Pennsylvania, which provides that private property shall not be taken or applied to public use without authority of law and without just compensation being first made or secured.

9. As there had been no lawful assessment of plaintiff's bonds and was no tax thereon due to the Commonwealth of Pennsylvania upon the first day of December, 1887, the act of June 30, 1885, if it required the treasurer of the corporation defendant to retain or withhold any sum whatsoever from the said interest, is void, because in conflict with section 10 of article I of the Constitution of the United States,

which forbids the States to pass any law impairing the obligation of contracts.

M. E. OLMSTED,
Attorney for Plaintiff.

Endorsement: No. 25. Feb'y term, 1888. W. W. Jennings *vs.* Coal Ridge Improvement & Coal Co. Plaintiff's points. Filed Jan. 5, 1888. H. F. Mann, prothonotary. Olmsted.

Copy of Def't's Plea.

W. W. JENNINGS
vs.
COAL RIDGE IMPROVEMENT AND COAL COMPANY.

In the Court of Common Pleas of Northumberland County. No. 25. February Term, 1888.

DECEMBER 23D, 1887.

Defendant pleads non-assumpsit.

S. P. WOLVERTON,
Attorney for Defendant.

28 Endorsement: No. 25. February term, 1888. W. W. Jennings *vs.* Coal Ridge Improvement and Coal Company. Def't's plea. Wolverton. Filed Dec. 23, 1887.

29 W. W. JENNINGS
vs.
COAL RIDGE IMPROVEMENT AND COAL COMPANY.

In the Court of Common Pleas of Northumberland County. No. —. Term, 188–.

Depositions of witnesses taken before John F. Lewis, notary public, at No. 324 Chestnut street, Philadelphia, Pa., at eleven o'clock, a. m., on Saturday, December 10, A. D. 1887, by virtue of the annexed rule of court.

Appearances: M. E. Olmsted for plaintiff; S. P. Wolverton for defendant.

ISRAEL W. MORRIS called on behalf of plaintiff and sworn. (Examination deferred for the present.)

W. W. JENNINGS, plaintiff, called and affirmed.

Examined by Mr. OLMSTED:

Q. Where do you reside?
A. In Harrisburg.
Q. What is your occupation?
A. Well, banker to some extent.
Q. Are you connected with any banking institution of that city?
A. I am president of the Commonwealth Guarantee, Trust and Safe Deposit Company of Harrisburg.
Q. Are you connected with any other financial institution of that city?

A. I am president of the First National bank.
Q. You are, I believe, the plaintiff in this suit?
A. Yes, sir.
Q. Are you, or were you, on the 1st day of December, 1887, the owner of any bonds of the Coal Ridge Improvement and Coal Company, the defendant in this suit?
A. I was at that time the owner of $20,000 of bonds, and still own them.
Q. Have you them here?
A. I have forty $500 bonds, from No. 1 to 40, inclusive.
Q. Are they registered or coupon bonds?
A. They are registered bonds. They are registered in my name, sir.
Q. Will you produce the bonds?
A. I have them here, sir.

(Witness hands bonds to counsel, and they are marked for convenience of reference Exhibits 1 to 40, inclusive.)

Q. State whether or not the interest due upon these bonds on the 1st day of December has been paid.
A. It was not paid, sir.
Q. State whether or not you made any demand for the payment of that interest.
A. I made demand for it by letter. I have a copy of the letter.
Q. Will you let me have a copy of the letter, if you please?

(Witness produces letter and hands to counsel.)

Q. On what day did you write to the company?
A. On the 30th day of November.
Q. Demanding the interest due on the 1st of December?
A. Yes, sir.
Q. What response, if any, did the company make to that letter?
A. I have their letter.

(Witness produces letter.)

Q. Is this the letter you received?
A. Yes, sir; that is the letter I received.

(Letter marked for convenience of reference Exhibit 41.)

Q. Did you write further to the company in answer to this letter?
A. Yes, sir; I did.
Q. On what day?
A. My letter is dated the 2d of December.
Q. Did you receive any reply to your letter of that date?
A. I did. I have it here, dated the 5th.

(Letter produced and marked for convenience of reference Exhibit 42.)

Q. In answer to this letter marked Exhibit No. 42, did you write further to the company?

A. Yes, sir.

Q. On what day?

A. On the 6th day of December.

31 Q. In the letter of December 5th from the company, marked Exhibit 42, was there any enclosure?

A. Yes, sir; an enclosure as stated in the letter.

Q. And what was it?

A. It was a check for $570.

Q. What did you do with that check?

A. I returned it in the letter of the 6th of December.

Q. Did you receive any further communication upon the subject from the company?

A. Yes, sir; I did. This is the last letter I received. (Letter produced and marked for convenience of reference Exhibit No. 43.)

Q. This letter of December 7, marked Exhibit 43, was the last letter, I understood you to say?

A. Yes, sir; that ended the correspondence.

Q. Has there been no payment of the interest due December 1st?

A. No, sir; other than the tender of the check for $570, as in the letter of December 6, I think it is.

Q. And which you declined to receive?

A. Yes, sir; I answered that letter, declining to receive it as in full of interest.

(Direct examination suspended for the present.)

Cross-examined by Mr. WOLVERTON:

Q. Colonel, did you purchase these bonds since the passage of the act of June 30, 1885, entitled "A further supplement to an act entitled 'An act to provide revenue by taxation,' approved seventh of June, one thousand eight hundred and seventy-nine"?

A. Yes, sir.

Q. You knew at the time that the provisions of this act required the payment of three mills on the dollar upon the face value of corporate indebtedness?

A. I am not sure that I did.

Q. Had tax *on* three mills been deducted from the interest upon bonds held by you in other corporations prior to your purchase?

A. I have no bonds similar to these in any other corporation.

Q. Your reasons for declining to accept the check sent you by the defendant in this case are set forth in your letter?

A. Yes, sir.

32 Q. Your objection, Colonel, was not to the form in which the payment was tendered to you, but the amount?

A. I had no question about the check being good; it was the amount I objected to.

Q. As I understand from your letter, you claim that the Coal Ridge Improvement and Coal Company had no right to deduct three mills from the face value of the bond, but only upon what you considered the bonds worth?

A. Well, I claim that they had no right to deduct three mills from the face value of the bond.

Q. Was that because the bond was worth less than its face value in market?

A. That was one of the reasons, sir.

(Examination suspended for the present.)

Mr. MORRIS recalled.

Examined by Mr. OLMSTED:

Q. Where do you reside, Mr. Morris?

A. My residence is 225 South Eighth street, Philadelphia.

Q. What official relation, if any, do you sustain to The Coal Ridge Improvement and Coal Company, defendant in this suit?

A. I am president of the company.

Q. Will you state whether or not your company received a letter from W. W. Jennings, the plaintiff, dated November 30, 1887?

A. We did, sir.

Q. Have you that letter with you?

A. I have the original.

Q. Will you produce it?

(Witness produces letter, which is marked for convenience of reference Exhibit 44.)

Q. Have you a letter addressed to the treasurer of your company by W. W. Jennings, under date of December 27?

A. I have, sir.

Q. Will you produce that?

A. I will produce it.

(Letter produced by witness and marked for convenience of reference Exhibit 45).

Q. Have you a letter addressed to the treasurer of the company by W. W. Jennings, under date of December 6?

33 A. I have, sir.

Q. Will you produce it?

(Letter produced by witness and marked for convenience of reference Exhibit No. 46.)

Q. Mr. Morris, will you examine these papers marked Exhibits Nos. 1 to 40, inclusive, and state whether or not they are bonds issued by The Coal Ridge Improvement and Coal Company, defendant.

(Exhibits Nos. 1 to 40 shown to witness.)

A. They are bonds issued by virtue of a mortgage dated February, 1874, for $200,000. They are a portion.

Q. That is your signature as president?

A. Yes, sir.

Q. And that is the signature of W. C. Alderson, secretary?

A. This is his signature.

Q. And that is the seal of the corporation?

A. Yes, sir; the seal of the corporation.

Q. According to the terms of these bonds, there seems to have been due W. W. Jennings, plaintiff, in whose name they are registered, six months' interest on the 1st day of December, 1887. Has that interest been paid?

A. The interest was tendered to Mr. Jennings, less the tax required by the State.

Q. There has been no tender to him of the full amount of $600?

A. No, sir.

Q. Mr. Morris, I notice that this bond, No. 1, was originally issued to Thomas R. Maris. Can you state what consideration the company received for that bond.

A. Seventy cents on the dollar.

Q. Some other of these bonds seem originally to have been issued to Mr. Maris and others to Thomas Cooch. Did you receive the same price for all of them?

A. The same amount, seventy cents on the dollar.

Q. What was the total amount of this loan?

A. $200,000.

Q. As stated in the mortgage?

A. Yes, sir.

Q. Did I understand you to say that is the consideration which the company received for the entire loan?

34 A. Yes, sir; seventy cents on the dollar. It was all issued at that price.

Q. And that is all that the company received?

A. That is all the company received.

Q. Or was to receive?

A. Or was to receive.

Q. You have known, I suppose, from time to time of transfers?

A. There have been transfers from time to time.

Q. Can you state the prices at which the bonds were from time to time transferred?

A. I cannot.

Q. As president of the company, you know from the register in your office that there have been transfers, but do not know the prices at which the bonds were sold?

A. That is the fact.

Q. Does the mortgage securing these $200,000 cover the entire property of the company?

A. It does not. It covers about one-half.

Q. One-half in value or one-half in amount of territory?

A. One-half in amount.

Q. Is the property covered by this mortgage as valuable as the other part not covered by this mortgage?

A. Our experience in working has demonstrated that it was not.

Q. Has it been operated profitably since it has belonged to the company? I speak now of the property covered by this mortgage.

A. I think not. There have been three tenants upon it and they

have each failed. There have been three successors and they have each failed to be able to pay their way.

Q. Has the interest been paid in full upon these $200,000 of bonds, up to the 1st of December, with the exception of this amount in dispute?

A. No, sir; it has not.

Q. There are some arrearages of interest?

A. There are considerable arrearages of interest.

Q. So far as interest has been paid upon this issue of bonds, has it been paid out of the earnings of the property covered by this mortgage?

A. No, sir; the interest that was paid upon them was taken from the income from other property belonging to the company and not from this property covered by this mortgage.

35 Q. Then I understand you that the operation of that part of the company's property covered by this mortgage has not been sufficiently profitable to enable the company, from those earnings, to pay the interest?

A. That is correct.

Q. Is the property considered as valuable now as when it was purchased by the company or when this mortgage was put upon it?

A. The development of the veins upon it since have demonstrated that it is not as valuable as it was supposed to be at the time the mortgage was placed upon it.

Q. In your judgment, if that portion of the property covered by this mortgage were sold at forced sale, would it bring sufficient to pay the principal of $200,000 and the interest which is in arrears thereon?

A. That would be a pretty hard question for me, the president of the company, to answer.

Q. Do you mean to say that you have no opinion upon the subject, or that you would prefer not to express it?

A. Well, my opinion would be based upon the amount of earnings from the property which is mortgaged; and as that specific property has not been able to earn sufficient to meet the interest, I doubt whether it would sell for sufficient to cover the *property* and accrued interest upon it.

Q. Do you think it would sell for sufficient to pay the principal alone?

A. Well, I should not like to buy it with my present knowledge of it based upon that.

Q. From your knowledge of the property covered by this mortgage securing these bonds owned by the plaintiff, what, in your judgment, is a fair valuation of these bonds?

A. I do not think I could put a value on them. There is too much of the gamble in it—in the mining operation.

Q. Would you think them worth seventy-five cents on the dollar?

A. I should think that a high price for them.

Q. You state that with the knowledge you have, as president of the company, of the value of the property and its earning capacity?

36 A. And of the condition of the mines.

Cross-examined by Mr. WOLVERTON:

Q. You stated, Mr. Morris, that this mortgage securing these $200,000 covered half the property or half the land owned by the company. Is the other half of the lands mortgaged also?

A. It is.

Q. Would the company realize from that portion anything towards the payment of these bonds on the other half if there proved to be a deficiency upon the foreclosure of the mortgage?

A. The interest upon the mortgage upon the other half is in default also.

Q. Then am I to understand that, in your opinion, it affords no further security or additional security beyond the mortgage that secures these bonds?

A. I think it would be very little, if any.

Q. You stated that, at the time of the execution of this mortgage and the issue of these bonds, the company thought the land more valuable than it has proved since to be. What experience of the company or of its tenants has shown you that the land is not so valuable?

A. About the time this mortgage was made a lease was made upon the property covered by this mortgage to a tenant, Maris, Robinson & Co., who opened a colliery upon it. They worked for a few years and failed for something—I do not recollect their liabilities. They were considerable—fifty or sixty thousand dollars of liabilities. The colliery was then taken by another firm by the name of Mills & Morris, I think the firm was. I don't know what Morris it was; it was not myself. They also failed. It then remained idle for some time, when it was leased by Mr. A. H. Church, who attempted to prosecute the work and carried it on for a while, but found it disastrous and abandoned it; and the colliery is to-day abandoned and full of water, it being unprofitable to work.

Q. Was it because the veins proved faulty to some extent?

A. The veins proved faulty and what we call dirty in mining—very difficult to prepare and the product unsalable at a remunerative price.

Q. Then the depreciation in value of the property was from unseen causes, and such as could not have been seen at the execution of this mortgage?

37 A. Entirely so. We can never tell in mining in looking at a piece of property how a vein is going to turn out below the surface.

Q. At the time the company issued these bonds and executed the mortgage it was believed to be sufficient security for the payment of the principal and interest?

A. It was believed to be ample.

Q. Were these bonds issued and this mortgage executed to secure them for the purpose of raising money to improve the property?

A. Yes, sir; they were.

Q. The lands were undeveloped at the time, and it was for that reason that the bonds were sold below par, I suppose?

A. They were sold in order to raise money to assist in developing the property.

Q. Was a large amount of money expended in development?

A. I should say that there was not less than $200,000 expended in the development of the collieries—say between $200,000 and $250,000.

Q. Which I understand from your testimony was a loss?

A. Yes, sir.

Q. What is your experience with reference to taxes? How much taxes have you to pay annually upon this property?

A. The taxes upon this specific property amount to upwards of $1,000 a year—the county taxes.

Q. And did I understand you that from this specific property covered by this mortage there is now no income?

A. No income whatever; there is an outlay for taxes and for a watchman to look after the buildings to see that they are not destroyed—the buildings upon the property.

Q. How much stock was issued?

A. The capital stock of the company is one and a half million dollars.

Q. How much common and how much preferred?

A. $125,000 is preferred and the balance common.

Q. By whom was this preferred stock taken?

A. It was taken by the common stockholders.

Q. At what price did they take it?

A. At par.

Q. What was the object in issuing the preferred stock?

38 A. That was for development upon the other end of the property—the property not covered by this mortgage. It was issued for the purpose of furnishing money to develop the western end of the property. I think that was in 1864.

Q. Do you know what the common stock sold for, or has been selling for?

A. Well, I think I bought some of it some time ago for one cent a share, and some preferred for a cent and a half.

Q. I have only asked you these questions for the purpose of explaining the issuing of these bonds and the execution of the mortgages to secure them. You acted in good faith towards the public and those who purchased them, believing that the land was at that time fully and ample security for the payment of the bonds at maturity and of the interest upon them. I suppose that the other half covered by the other mortgage is, in your opinion, more valuable?

A. It is, sir.

Q. And is not yet fully developed?

A. No; it is not yet fully developed.

Q. What was the common stock selling for at the time of the issuing of these bonds?

A. At about $6.00 a share.

Q. And the preferred stock?

A. The preferred stock at a higher price. There was very little of it sold; but the common stock sold from $6.00 to $6.50 a share at the time the bonds were issued.

Q. The company, I understand you to say, has acted in entire good faith from the beginning in reference to the execution of these bonds and the stock for the purposes of improvement?

A. We have acted in entire good faith with the light that we had before us from time to time.

Redirect examination by Mr. OLMSTED:

Q. Your experience, I suppose, is not different from that of a good many other people who have gone into the coal business and found their investment unprofitable?

A. I have had that experience personally.

Q. Will you state whether or not the other end of the property, the end not covered by this mortgage, is worked now profitably or otherwise.

39 A. It is worked. There are two coll-eries upon the other end of the property which have been worked for the last two years—struggling in the condition of the coal trade.

Q. I understand from the correspondence which you have produced here, from your letter to Mr. Jennings, that some of the holders of these bonds have agreed not to press the company for the interest. I think I understood you to state that, so far as interest has been paid upon these bonds, it has been paid from the earnings of the property not covered by this mortgage?

A. That is a fact, sir—from the accretion of royalties upon the other property.

Recross-examination by Mr. WOLVERTON:

Q. Mr. Morris, when you sent the check to Mr. Jennings for $570, why did you deduct thirty dollars from the interest?

A. Because I understand the law to require us to do so.

Q. What law do you refer to?

A. The State law taxing the interest on bonds. I don't recollect the technical term of it. The law of 1885.

Q. Your company understands that, under the law of 1885, taxing corporate indebtedness for State purposes, the company was required to deduct three mills on the dollar of the face value of the bond issued by the company?

A. We have been so instructed. If I had read the law myself I would say we only had to pay three mills upon the interest paid. There appears to be a confusion in the law.

Q. The correspondence sets out your reasons for having tendered only the check for that much?

A. It does.

Mr. D. G. BAIRD, called on behalf of plaintiff, and sworn.

Examined by Mr. OLMSTED:

Q. Where do you reside?
A. In Beverly, Burlington county, New Jersey.
Q. Have you known of any sales of bonds of the Coal Ridge Improvement and Coal Company, issues of June 1st, 1874?
A. I have.
Q. Will you state the price or prices at which such sales have been made within your knowledge?
A. I have known of sales at sixty-six cents on the dollar. There were two sales—that is to say, two different amounts sold at that figure, in my knowledge.
40 Q. State what the amounts were.
A. The amounts were $2,500 and $6,000 of par value.
Q. Have you known of the sale of any bonds at a higher price?
A. I have knowledge of a sale of $41,500 at seventy.
Q. Have you known of any sales at any higher price than seventy?
A. I have not.

Mr. OLMSTED (to Mr. Wolverton): I have here the forty bonds for $500 each, marked Exhibits Nos. 1 to 40, inclusive. It will be a matter of considerable inconvenience, as you will readily see, to place them in evidence, and it would be a matter of some expense, perhaps, to encumber the record with such voluminous testimony, even if copies were taken. I would like to ask you now if, in view of the testimony, you will require me to put these in evidence or whether you will admit that upon the first day of December, 1887, there was due to plaintiff by the defendant the sum of $600 as interest upon the bonds concerning which the testimony has been given.

Mr. WOLVERTON: I do not see the necessity of encumbering the record with these bonds, and will admit that on the first day of December, 1887, according to the terms of the bonds and the mortgage securing them, there was due unto the plaintiff $600 of interest, less the State tax, and that this sum should have been paid to Colonel Jennings, less tax of three mills on the dollar of the face value of the bond, as required by the act of 1885.

Mr. Olmsted offers in evidence the letter of W. W. Jennings addressed to William C. Alderson, treasurer of the Coal Ridge Improvement and Coal Company, under date of November 30, 1887, which was testified to by the plaintiff and produced by Mr. Morris and marked Exhibit 44.

Also the letter of William C. Alderson, treasurer of the Coal Ridge Improvement and Coal Company, to W. W. Jennings, dated December 1, 1887, produced by the plaintiff and identified by Mr. Morris and marked Exhibit 41.

Also the letter of W. W. Jennings to William C. Alderson, treasurer of the Coal Ridge Improvement and Coal Company, testified to by the plaintiff and produced by Mr. Morris and marked Exhibit 45.

41 Also the letter of Mr. William C. Alderson, treasurer of the Coal Ridge Improvement and Coal Company, addressed to W. W. Jennings, under date of December 5, produced by the plaintiff and identified by Mr. Morris and marked Exhibit No. 42.

Also the letter of W. W. Jennings to William C. Alderson, treasurer of the Coal Ridge Improvement and Coal Company, under date of December 6, testified to by the plaintiff and produced by Mr. Morris and marked Exhibit No. 46.

Also letter of William C. Alderson, treasurer of the Coal Ridge Improvement and Coal Company, to W. W. Jennings, under date of December 7, produced by plaintiff and identified by Mr. Morris and marked Exhibit No. 43.

Mr. WINTHROP SMITH called on behalf of plaintiff and sworn.

Examined by Mr. OLMSTED:

Q. Where do you reside?
A. In this city—Philadelphia.
Q. What is your occupation?
A. Banker and broker.
Q. How long have you been engaged in that business?
A. Sixteen years.
Q. Of what firm, if any, are you a member?
A. Winthrop & Percy Smith.
Q. The business of that firm is what?
A. Buying and selling securities.
Q. State with what other financial firms or institutions, if any, you are connected, and in what capacities.
A. I am a director of the Philadelphia Mortgage and Trust Company; a member of the executive committee and director of the Penn National bank.
Q. Of what public exchanges for the sale of stocks and bonds, if any, are you a member?
A. Philadelphia and New York stock exchanges.
Q. You are a member of both the Philadelphia and New York exchanges?
A. Yes, sir.

Mr. WOLVERTON: Suppose you state, Mr. Olmsted, what you propose to prove by this witness, and for what purpose.

Mr. OLMSTED: I propose to prove by Mr. Smith, who is, as he has stated, a member of the Philadelphia stock exchange
42 and also of the New York stock exchange, that the bonds of corporations of other States are largely dealt in and owned in Pennsylvania; that many of them, as well as bonds and mortgages of Pennsylvania corporations, sell below par and many others above par, and that the nominal or par value of such securities is no substantial or equitable measure of their actual value—this for the purpose of showing that in the arbitrary assessment of mortgages issued by Pennsylvania corporations at par, regardless of their actual value, there is a discrimination between them and mortgages issued by individuals and mortgages and

bonds issued by foreign corporations and owned by residents of Pennsylvania, which are, under the law, to be assessed and taxed at their actual value, such discrimination being in violation of the first section of the ninth article of the constitution of Pennsylvania, which requires that all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the same; and also in violation of section 9 of article I of the constitution of Pennsylvania, which provides that no person shall be deprived of his life, liberty, or property, unless by the judgment of his peers or the law of the land.

Also in violation of article V of the amendments to the Federal Constitution, which provides that no person shall be deprived of life, liberty, or property without due process of law.

Also of section 1 of article XIV of the amendments to the Federal Constitution, which declares that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Also that the withholding of a State tax bond upon such an arbitrary, unequal, and unjust assessment is a taking of private property for public use without compensation, which is forbidden by the constitution of Pennsylvania; and also that a law which requires such a withholding from the interest due upon the bonds owned by defendant impairs the obligation of the contract, and is therefore void, because in conflict with that provision of the Federal Constitution which forbids the State to pass any law resulting in such impairment.

43 Mr. WOLVERTON: Defendant's counsel objects—

First. That foreign corporations and corporations created under the laws of the Commonwealth of Pennsylvania are different classes, and the legislature has power to tax them as different classes of corporations and at different rates, and has the right to tax one at the par of its obligation and the other at a different rate.

Second. Because it is irrelevant.

Mr. OLMSTED: To which plaintiff's counsel replies that the power of the legislature to make a separate class of mortgages, issued by corporations chartered by other States, or by individuals, and another class of those chartered by the State of Pennsylvania, is denied, and that, in any event, the objection is not applicable to this case, as the legislature has made no such classification; but the first section of the act of 1885 has grouped them together under one head and in one class as "mortgages," the only discrimination being in the method of assessment provided by the fourth section of that act.

Q. Is the business of Winthrop & Percy Smith, of which you have spoken, of which you have stated yourself to be a member, an extensive one, so far as the buying and selling of securities of corporations is concerned? I know your modesty would prevent you, perhaps, from stating the extent of your own business, and yet it

may be important for this case that I should know. Therefore I ask you to state fully.

A. I can't tell you, of course, how extensive it is, but I know that we do quite a large business in the buying and selling of securities. I suppose we are reckoned among the prominent investment-houses in Philadelphia.

Q. State whether or not your firm pays special attention to seeking out and buying for customers corporate bonds for permanent investment?

A. We do, sir. We make a specialty of investment securities. We do very little in speculative stocks.

Q. Do you or do you not frequently yourselves buy securities for the purpose of selling them to your customers?

A. We do, sir.

Q. Does the business in which you are engaged require you to ascertain frequently the value of the securities of the corporations of Pennsylvania and other States?

44 A. We never offer a bond for sale that we don't get all the information possible as to its value.

Q. State how, when bonds or mortgages of corporations are presented to you for purchase, either for yourself or for your customers, you proceed to determine the value of those bonds or mortgages.

A. We want to know the character of the property, the location——

Q. Excuse me, but by property do you mean the mortgage or the property by which the mortgage is secured?

A. We mean the character of the property which is mortgaged; the kind of business, the location, earning capacity of the property mortgaged, or business mortgaged, and the amount of mortgage as compared with the value of the property; often, also, by personal examination, or through the examination of an agent whom we send out to make investigation.

Q. The value of the property mortgaged, has it or has it not a good deal of effect in determining the value of the mortgage or of the bond?

A. It is very essential, sir.

Q. You stated, I think, that the earning capacity of the property mortgaged had some effect in determining the value of the mortgage or of the bond?

A. Yes.

Q. Does or does not the relative position of the lien of mortgage—as first, second, or third mortgage—have any effect upon its value?

A. As a general thing, the terms being equal, a first mortgage is more valuable than a second, a second than a third, a third than a fourth, and so on.

Q. Are income or debenture bonds not secured by mortgages as valuable, ordinarily, as bonds which are secured by mortgages?

A. They are not, sir; because there is no security back of them except the time note of the company, and there is nothing to prevent a mortgage being placed ahead of them, which would lessen the value of the income or debenture bonds.

Q. The property mortgaged being ample security for the loan, state whether or not the rate of interest which the bond or
45 mortgage bears has any effect in determining the actual value of the bond or mortgage.

A. It has, sir. Two bonds of equal value, one bearing four per cent. and the other six, of course the six per cent. bond would command the higher price in the market.

Q. All other things being equal, does the length of time which the bond has to run have any effect in determining the value of the bond?

A. It does. A bond having a long maturity will command a much higher price than one having a short.

Q. Can you state any reason for that fact?

A. Yes. Investors, as a rule, prefer a long-time bond to a short one, because they do not have to make so many changes of their investments.

Q. In the case of two six per cent. bonds, each of undoubted security, one having five years to run and the other twenty years to run, can you state what would be the difference in their actual value?

A. That is a mat-er of calculation. I suppose the difference would *would* be—may I refer to memoranda?

Q. Well, you may state about.

A. That is a matter of calculation. I suppose the difference would be about eighteen per cent.

Q. That, I understand you to mean, is about what, in actual practice in your business, you find to be the difference between bonds, such — I have stated, having those different periods to run?

A. About that difference; yes, sir; but as a bond advances in premium it, as a general thing, pays little less as it goes up than a bond of short maturity.

Q. In actual business do people in buying a bond having twenty years to run pay about eighteen per cent. more than they pay for one having five years to run, the security being the same?

A. Yes, sir; you can see that by reference to our official stock reports.

Q. Take two bonds, each of undoubted and perfect security and each having, say, fifteen years to run, one bearing four per cent. interest and the other seven per cent. interest, what would be the difference in their actual values—market values?

A. Twenty-five to thirty per cent.

46 Q. If each of those bonds had twenty-five years to run, what would be the difference?

A. Thirty to thirty-five per cent.

Q. Ten years to run?

A. Twenty to twenty-five per cent. They are all matters of calculation.

Q. If we make it a little closer, the security in each case being good and each having ten years to run, one bearing interest at the rate of five per cent. and the other at six per cent. per annum, what would be about the difference?

A. Well, from ten to twelve per cent.

Q. Would or would not the rules and principles which you have indicated above for determining the value of bonds and mortgages issued by corporations govern you in determining the actual value of bonds and mortgages issued by individuals?

A. Yes, sir; the same general principles would apply, but the bond of an individual, as a rule, will bring nearer par than that of a corporation, because there is not the same market for it. An individual bond having ten years to run would not bring the same price as a part of a large loan of the Pennsylvania Railroad Company having ten years to run. It may be just as good, but it has not the same market.

Q. Would you or would you not apply the same rules and principles indicated by you for determining the actual value of bonds and mortgages in determining the value of a bond issued by a corporation of the State of Pennsylvania and also in the case of a bond issued by a corporation of another State?

A. Yes, sir; the same general principles.

Q. State whether or not, in the business in which you are engaged, that of buying and selling securities and dealing in them and investing in them, the nominal or par value of corporate bonds and mortgages is a fair criterion of their actual value?

A. It is not, sir, because one bond may be worth 150 and the other may not be worth 50.

Q. If a block of bonds of corporations of the State of Pennsylvania were tendered to you for purchase you would not accept their nominal value as indicating their real value without some further inquiry?

A. No, sir.

47 Q. Do you know, of your own knowledge, whether or not there are many bonds, mortgages, and other securities of foreign corporations owned by residents of Pennsylvania? By foreign corporations I mean any corporation not chartered by the State of Pennsylvania.

A. Yes, sir; I do. We have bought and sold, I suppose, several millions of dollars of securities of foreign corporations for Philadelphia investments. How many I don't know.

Q. Have you also bought them for investors in other parts of the State?

A. Yes, sir.

Q. And do you know whether or not many of them so purchased by you are still held by residents of Pennsylvania?

A. They are, sir. I know it.

Q. Will you state the names of some of the foreign corporations whose securities you know to be owned by residents of Pennsylvania?

A. Chicago, Milwaukee & St. Paul R. R. Co., Columbus & Indianapolis Central R. R. Co., Cass Avenue Street Railway Co. of St. Louis, Erie Railway Co., Indiana, Bloomington & Western R. R. Co., Iowa Water Co. bonds, Jersey City bonds, Jacksonville, Tampa & Key West R. R. Co. bonds, Keokuk water bonds, Morris & Essex railway, Minneapolis street railway, New York city bonds, Northern Pacific R. R., Norfolk & Western, Ohio & Mississippi railway, Pacific R. R.

of Missouri, Omaha water works, St. Paul and North Pacific, St. Paul, Minneapolis and Manitoba, St. Louis and San Francisco R. R., Texas & Pacific R. R., Toledo, Peoria & Western, New York Central, Lake Shore & Michigan Southern, Denver & Rio Grande.

Q. How about the Michigan Central?

A. Yes; Texas Pacific, Missouri, Kansas & Texas.

Q. Any New Orleans Pacific?

A. That is part of the Texas and Pacific.

Q. Any Union Pacific?

A. Yes; Union Pacific. In fact, almost all the securities mentioned on the New York list are, more or less, owned in Pennsylvania.

Q. Is the actual value of any of those securities which you yourself have sold and know to be owned by residents of Pennsylvania, securities of foreign corporations, below their nominal or par value?

48 A. Yes, sir; some are.

Q. Can you recall some of the bonds?

A. Texas Pacific Railway Co., Rio Grande division, have sold as low as forty cents on the dollar. They are now about 68. New Orleans Pacific Railway Co. first mortgage sixes have sold at fifty cents on the dollar. I think they are now seventy-five—in the neighborhood of seventy-five. Rio Grande consolidated sevens have sold down—the road was reorganized and these bonds were converted into four per cents, which are now worth in the neighborhood of seventy-five. Northern Pacific second-mortgage bonds, originally placed at eighty-seven and a half, have sold up to one hundred and a six and a half, and are now worth about ninety-five. The dividend scrip is worth about ninety-five.

Q. How about Mexican Central?

A. That company has also been reorganized, and most of its securities are selling at a discount, quite a large one, but from memory I can't tell you at what they are selling. I could mention other corporations if necessary.

Q. The securities of all those companies which you have named are selling below par, at about the figures you have mentioned?

A. Yes.

Q. Do you know, of your own knowledge, whether a good many bonds of Pennsylvania corporations are held in other States?

A. Yes, sir; I do; because we have had interest orders and coupons sent to us for collection from correspondents in other States.

Q. Is the fact that a company is incorporated by the State of Pennsylvania necessarily an indication that its bonds are all held in Pennsylvania?

A. No, sir; it is an indication, on its face, that you would naturally suppose that many of them are, but it does not follow that they are.

Q. Investors—persons seeking investments—are not confined by State lines?

A. No, sir. I think, as a rule, they prefer the securities issued in their own State, because they are nearer home and they can

learn more easily about them. The average investor, where
49 the security is good, prefers a home investment to a foreign investment. By foreign I mean that of another State. This would not apply to southern State bonds, in which we have not a great deal of faith.

Q. Do you know as a matter of fact that the bonds of Pennsylvania corporations are largely held in other States and the bonds of corporations of other States are largely held in Pennsylvania?

A. I do, sir; and many of the bonds of Pennsylvania corporations are held largely abroad.

Q. Are there many bonds of Pennsylvania corporation- whose actual value is lower than their nominal or par value?

A. There are quite a number, sir.

Q. Can you recall some of them?

A. With the exception of the consolidated mortgage of the Philadelphia and Reading Railroad Company within the past two or three years—all bonds succeeding the consolidated mortgage of the Reading Railroad Company within the past two or three years have sold anywhere from twenty-five to one hundred cents on the dollar. Those of the Buffalo, New York and Philadelphia Railroad Company have sold at a discount, a very heavy discount in some cases; in fact, almost unmarketable; the Schuylkill Navigation Company. By reference to our stock-lists I could mention other corporations whose bonds have sold at a discount.

Q. Many other corporations of the State of Pennsylvania?

A. Yes, sir; of the State of Pennsylvania.

Q. Do you know the value of the first-mortgage bonds of the Beech Creek Railroad Company?

A. The market value of the Beech Creek Railroad Company first-mortgage four per cent. bonds is eighty to eighty-five. There is a very limited demand for them, and they rarely sell.

Q. But the interest is regularly paid upon those bonds, is it not?

A. The interest to-day is regularly paid. The road has been reorganized two or three times. It was reorganized again in 1886. I think it was originally the Susquehanna and Southwestern, and then the Clearfield, Susquehanna and Southwestern, and afterwards reorganized again under the title of the Beech Creek railroad—some time in 1886.

50 Q. What reason can you give why first-mortgage bonds of a corporation upon which the interest is regularly paid should sell below par?

A. It is often the case that interest is paid upon a bond when it is not earned, and the investor loses his faith in the value of the security and fears a default, and therefore it declines in value.

Q. Does it ever occur that the interest is paid regularly for the time being, while there may exist doubts as to the principal being ultimately paid in full?

A. Yes, sir; it does occur; that could be explained by the fact that where a bond is guaranteed, principal and interest, it commands a higher price than where merely the interest is guaranteed.

Q. Is it of frequent occurrence that bonds on which the interest is paid sell below par?

A. Yes, sir; an example of that is the income-mortgage bonds of the Danville, Hazleton and Wilkesbarre Railroad Company, selling to-day at ninety-eighty per cent.

Q. Is that a Pennsylvania corporation?

A. Yes, sir; Perkiomen Railway Company first-mortgage five per cent. bonds and others that I might mention.

Q. I wish you would state, Mr. Smith, whether or not, in your judgment and according to your experience, the par value of shares of stock issued by corporations is a fair, reasonable, and accurate criterion of their actual value.

A. It is not, sir, any more than is the par value of a bond.

Q. Would you apply about the same principles in determining the value of one as of the other?

A. I would apply the same general principles in finding the value of one as I would in finding the value of the other, except that in the case of a bond the interest is the obligation of the company, and the dividend depends upon the earnings of the company; but the same general principles would apply.

Q. Will you state, Mr. Smith, the values in November, 1886, of the various corporate bonds and mortgages, as indicated by transactions at the Philadelphia stock exchange, of which you have said you are a member? You were a member at that time, were you not?

A. Yes, sir; I can by reference to official stock reports which we have.

51 Q. Suppose you give us, then, the figures for each security, either for the month of November, 1886, or, if you have it, for the entire year.

A. I have here a statement showing the monthly range of railroad and canal bonds and other securities dealt in in the Philadelphia stock exchange in 1886.

(Statement marked "Exhibit A.")

Q. How was that statement prepared?

A. This statement is prepared by William B. Dana & Co. from official records of the stock exchange.

Q. As a member of that stock exchange, can you state, from your own knowledge, whether or not those quotations, the figures given in that statement, are correct?

A. They are almost invariably correct. A mistake in a figure might be made in them as well as in anything else.

Q. Was the statement prepared under your direction?

A. No, sir. These books are published by William B. Dana & Co. in the interest of different brokers, and the quotations are taken from the official lists of the stock exchange.

Q. Is that statement one or a copy of one which you sent out to your customers?

A. Yes, sir.

Q. As containing the correct and official statement of quotations?

A. Yes, sir; as containing true quotations of securities dealt in in the Philadelphia stock exchange.

Q. Do you believe it to be a correct statement of those quotations?

A. I do, for I have had many an occasion to prove it.

Q. From your knowledge as a member of the stock exchange, how far can you corroborate the accuracy of those statements? From your knowledge of the transactions there, do you believe the facts contained in that statement to be correct?

A. I do, because I have had frequent occasion to make comparisons to prove the correctness of the figures mentioned.

Q. Can you give me a statement from any other source showing the highest and lowest prices of railroad, canal, and other bonds dealt in at the Philadelphia stock exchange during the month of November, 1886? Can you make such a statement which you know to be correct?

52 A. I have here a statement which I have compiled from the official quotations of the stock exchange for the month of November, 1886.

Q. From what did you compile that statement?

A. From the official reports of the Philadelphia stock exchange as printed for it under the direction of the exchange.

(Statement marked "Exhibit B.")

Q. Mr. Smith, independent of the compilation of those figures from the records of the stock exchange, can you state from your own knowledge of the transactions there whether or not the figures given are correct or substantially so?

A. Yes; because we have daily dealings in the Philadelphia stock exchange by which their quotations are proved—our own transactions, for instance.

Q. Have you any similar statistics showing the values in the New York stock exchange for November, 1886?

A. I have here a statement which I have compiled from the official quotations of the New York stock exchange for the month of November, 1886.

(Statement marked "Exhibit C.")

Mr. OLMSTED:

Q. It occurs to me to ask you one question right here, and that is whether or not the financial and monetary condition of the country has any effect upon the values of corporate stocks and bonds?

A. In times of panic securities sell at lower prices than when money is easy. When there is a surplus seeking investment securities command much higher prices than when money is active.

Q. When money is withdrawn to some extent from industrial enterprises and large amounts are seeking investment——

A. It has a very large and important bearing upon the prices of securities.

Q. Can you mention any year or years in which, owing to the

conditions you have suggested, there was any great difference in values from those you have given for 1886?

A. The periods that I recollect are the year of the Chicago fire, the panic of 1873, the year of the Boston fire, and the year of the railroad riots, 1887, and when the Reading Railroad Company first went into bankruptcy.

53 Q. Were corporate securities, particularly the bonds, higher or lower at those periods than in the year 1886?

A. I think they were lower, sir.

Q. Can you give me the same statement, say, for the month of November, 1877, that you have for the year 1886 as to the Philadelphia stock exchange?

A. Yes, sir; from the same sources. I have here a statement which I have compiled from the official quotations of the Philadelphia stock exchange for the month of November, 1877.

(Statement marked "Exhibit D.")

Q. Can you give me a similar statement showing the values in the New York stock exchange for November, 1877?

A. I have here a statement which I have prepared from the official quotations of the New York stock exchange for the month of November, 1877.

(Statement marked "Exhibit E.")

Q. I notice in the sales at the Philadelphia exchange a difference of nearly fourteen per cent. between the first-mortgage bonds of the Lehigh Valley Railroad Company and the second-mortgage bonds of the same company, the first-mortgage selling at $125 and second at $139. Can you tell why there should be that difference?

A. The first-mortgage bonds of the Lehigh Valley Railroad Company are six per cent. bonds, due in 1898, and the second-mortgage bonds are sevens, due in 1911. One has a higher rate of interest and a longer maturity than the other, and both are considered first-class securities.

Q. The fact that the second-mortgage bears a higher rate of interest and has a longer time to run makes it more valuable than the first, in the judgment of investors, as shown by transactions at the Philadelphia stock exchange—a difference of about fourteen per cent.?

A. Yes, sir.

Q. How does the third consolidated mortgage sell as compared with the first, they both bearing the same rate of interest?

A. I have forgotten the quotations for the consolidated. I think there was a difference of ten per cent. in favor of the consolidated bond.

Q. That being a third-mortgage bond?

A. That being a third-mortgage bond; because it can be
54 converted into a perpetual six per cent. bond, and all bonds of the Lehigh Valley are held in such high estimate that the investor sees very little difference in the priority of mortgage. It is an exceptional case.

Q. Then the longer they have to run the more valuable they are considered. Is that the fact?

A. Yes, sir.

Q. Have you ever known these consolidated mortgage bonds which are now selling at—about what? Mr. Smith, do you recall?

A. Well, I think about 131 to 132.

Q. Have you ever known these consolidated mortgage bonds of the Lehigh Valley Railroad Company, which you now say sell at 131, to sell below par?

A. Yes, sir; I have known them to sell below 90. They were originally put upon the market, I think, at 92 to 95. I think we bought some at that time for some of our customers.

Q. Can you recall how low you have ever known an interest-bearing bond to sell—one on which the interest was paid?

A. I have known Union and Titusville mortgage bonds to sell at forty-five cents on the dollar. It is one of the divisions of the Buffalo, New York and Philadelphia Railroad Company.

Q. How high have you ever sold an interest-bearing bond?

A. We have sold Lehigh Valley seven per cent. bonds at 148; New York city 7's, due 1920, at 170 and interest; city of Philadelphia six per cent. loans at 136 and interest.

Q. Do the bonds of coal companies, as a general rule, sell higher or lower or at about the same price as railroad bonds bearing the same rate of interest?

A. As a rule they sell lower, because loans of coal companies, as a general thing, are smaller and not as well known as those of railroad companies. They are rarely listed on the exchanges.

Q. Do you know anything of the value of the Clearfield Bituminous Coal Corporation's first mortgage bonds?

A. I do not, sir.

Q. Would you like to have some of them at par?

A. I would not take anything at par unless I'd investigate it.

Q. How do the bonds of iron companies range as compared with railroad bonds bearing the same rate of interest and having the same time to run?

55 A. As a rule they sell lower, because the security is not looked upon as favorable as that of railroads. Usually listed securities sell higher than unlisted securities; and also the amount of the mortgage is generally comparatively small, so that it is not so well known.

Q. What do you mean by listed securities?

A. Those that are admitted to dealings on the exchange.

Q. Do you know how the securities of the New York, Lake Erie and Western Railroad Company range in the market? I think they are covered by your statements, but I will ask you specifically.

A. The first, second, third, fourth, fifth, and consolidated mortgages of the Erie Railway Company sell above par. The New York, Lake Erie and Western new consolidated bonds command about par. The new second consolidated 6's sell at about par; collateral trust 6's above par. I don't remember a quotation for the

funded coupon 5's or Buffalo and Southwestern mortgage 6's, which are a part of that system.

Q. How are the securities at this time of the Buffalo New York and Philadelphia Railroad Company? Are they valued above, below, or at par?

A. With the exception of the Warren and Franklin seven per cent. bonds, I think they are all selling below par, some as low as twenty-four cents on the dollar.

Q. The Warren and Franklin, of which you spoke, is one of the branches of the Buffalo, New York and Philadelphia?

A. It is one of the branches, and has a guarantee from the Pennsylvania railroad.

Q. Do you know anything of the value of the bonds of the Dunbar Furnace Company?

A. I do not, sir.

Q. Delano Land Company?

A. I do not, sir.

Q. The bonds of J. Langdon & Co., incorporated?

A. I do not, sir.

Q. Lehigh Valley Coal Company?

A. I do not, sir; I think they are very closely held.

Q. Blossburg Coal Company?

A. No, sir.

Q. Buffalo, Bradford and Pittsburg Railroad Company?

56 A. No, sir.

Q. Chester Pipe and Tube Company?

A. No, sir.

Q. Hillside Coal and Iron Company?

A. No, sir.

Q. Are none of those bonds dealt in upon the exchanges?

A. They are not.

Q. The Crane Iron Company, is that dealt in at the exchange?

A. No, sir.

Q. Lehigh Luzerne Coal Company?

A. No, sir.

Q. Lehigh and Lackawanna Railroad Company?

A. No, sir.

Q. United Gas Improvement Company?

A. No, sir.

Q. Bethlehem Iron Company?

A. No, sir.

Q. How did the securities of the New York, Chicago, and St. Louis Railway Company range in November, 1886? I think that is covered by your statement; but I ask you again specifically.

A. First mortgage 6's, 96 to 97; second mortgage bonds, 66 to 67.

Q. Are the bonds of the Northwestern Mining and Exchange Company sold on the exchange?

A. No, sir.

Q. Have you any knowledge as to the actual value of the bonds of any of those companies I have mentioned, which are not dealt in upon the exchange?

A. Have I any actual knowledge?

Q. Yes.

A. I have not; but I have a general knowledge of a few, based upon hearsay.

Q. Which ones?

A. Lehigh Valley Coal Company, and Bethlehem Iron Company.

Q. I think you stated that ordinarily those securities which are not listed do not sell as readily nor as high as those which are dealt in on the stock exchange?

57 A. They are not so marketable and do not, ordinarily, sell as high.

A. No, sir.

Q. Mr. Smith, I wish you would state whether or not there are bonds of foreign corporations—by that I mean corporations of other States or counties—sold in Philadelphia at the public stock exchange. Possibly I have asked that or a similar question before; if so, please answer it again.

A. They are occasionally; yes, sir.

Q. Are they listed there?

A. Yes, sir; there are a few—Texas and Pacific, New Orleans Pacific, and others I might mention by reference to the stock list. Ashtabula and Pittsburgh, Baltimore and Ohio, Baltimore and Potomac, Belvidere and Delaware, Camden and Amboy, Camden and Atlantic, first, second, and third mortgages, Camden and Burlington, Central Pacific.

Q. The Central Pacific is a pretty large loan, is it not?

A. About $26,000,000.

Q. All listed at the Philadelphia stock exchange?

A. Yes, sir; Delaware and Bound Brook, Denver and Rio Grande.

Q. How many mortgages of the Denver and Rio Grande are listed at the Philadelphia stock exchange?

A. The first mortgage and the first consolidated 4's. They aggregate about $29,000,000. The first-mortgage 7's sell above par and the first consolidated 4's sell from 75 to 80.

Q. What is the amount of the first-mortgage 4's which sell at about 75 to 80?

A. The amount of the first consolidated 4's is $22,000,000.

Q. They sell at about 80, you say?

A. Yes, sir; about 75 to 80.

Q. Do the securities of the Duluth Short Line sell at the Philadelphia stock exchange?

A. They are listed there.

Q. How about the Ithaca & Athens first mortgage?

A. They are listed, sir.

Q. Listed in the Philadelphia stock exchange?

A. Yes, sir.

Q. The New Orleans Pacific?

A. Yes, sir.

58 Q. That is a large loan, of over $6,000,000, is it not?

A. Close on to $7,000,000.
Q. What prices do they sell at?
A. I think they are in the neighborhood of 75.
Q. 75 cents on the dollar?
A. Yes, sir.
Q. Northern Pacific mortgages, any of them?
A. All the issues of the Northern Pacific are dealt in on the Philadelphia stock exchange.
Q. What is the amount of those Northern Pacific loans?
A. About $70,000,000.
Q. Are Norfolk and Western general mortgage bonds dealt in?
A. Yes, sir; close on to $7,000,000.
Q. Convertible debentures of that company?
A. Yes, sir.
Q. What do they sell for?
A. About 86.
Q. Do the Richmond and Danville Railroad Company bonds sell upon the Philadelphia stock exchange?
A. Yes, sir; the loan is about $6,000,000.
Q. Shenandoah Valley securities?
A. Yes, sir.
Q. Do they sell above or below par?
A. At present they are selling below par.
Q. Large loans, are they not?
A. Yes, sir; about $7,500,000 in the aggregate.
Q. Have you known a great many of the bonds of the Shenandoah Valley railroad to be sold at the Philadelphia stock exchange?
A. Yes, sir.
Q. At prices below par?
A. Originally the first 7's were placed at par, and afterwards above, but after the road got into trouble they declined and fell 55 cents on the dollar, and have since sold up to 107, and are now selling below par.
Q. How about the Texas and Pacific Railroad Company's securities? Were they dealt in at the Philadelphia stock exchange?
A. Yes, sir.
Q. Do any of them sell below par?
59 A. The only bonds that sell above par are the first mortgage on the Eastern division.
Q. How do the others sell?
A. All below par.
Q. Have you known many of these to be sold in Philadelphia?
A. Dealings in those bonds have been very large in Philadelphia.
Q. United Railroad Company of New Jersey—does its loans sell on the Philadelphia market?
A. The markets of the United New Jersey's loans are Philadelphia and London. The majority of the sales are made here.
Q. $50,000,000 of the four per cent. of the West Shore Railway Company—are they listed on the Philadelphia exchange?
A. They are, sir; but sales are few here.

Mr. OLMSTED: Plaintiff's counsel now proposes to prove by the witness that upon the first day of December, 1887, the day upon which the interest in controversy fell due, the public sales of bonds at the Philadelphia stock exchange show a wide range of prices, and that the actual value of such securities is very different from their par value. It is for the purpose of showing that in taxing all bonds of Pennsylvania corporations at their nominal or par value great discrimination is made between the various bonds of such corporations, some of them being taxed at a rate much higher and others at a rate much lower than their actual value, and thereby violating the provisions of section 1 of article IX of the constitution of Pennsylvania.

Mr. WOLVERTON: Defendant's counsel objects because the record of sales of bonds at the exchange on any particular day is not the best evidence of what the actual value of the bond is, as sales from time to time are likely to fluctuate from temporary cases not affecting the value of the bond, and therefore irrelevant in the issue between the parties in this case.

Q. Can you tell me how many bonds were sold at the Philadelphia stock exchange on the 1st day of December, 1887?

A. About $50,000 of bonds were sold upon the 1st day of December.

Q. What was the highest price at which bonds sold on that day?

A. 114.

60 Q. What bonds were they which sold at 114?

A. Lehigh Coal and Navigation 6 per cent. gold loan.

Q. That company is a corporation of the State of Pennsylvania, is it not?

A. Yes, sir.

Q. What was the lowest price at which bonds sold on that day?

A. 76 per cent.

Q. What company's bonds were those?

A. Philadelphia and Reading Railroad Company consolidated second series 5 per cent. bonds.

Q. The Philadelphia and Reading Railroad Company is a corporation of the State of Pennsylvania, is it not?

A. Yes, sir.

Q. How many bonds were sold on that day above par?

A. $21,200.

Q. How many were sold below par?

A. $28,000.

Q. How many were sold at par?

A. None, sir.

Q. Can you tell how many bonds were sold at the New York stock exchange on the 1st day of December, 1887?

A. About $766,500 of bonds were sold on that day.

Q. What was the highest price at which bonds sold on that day?

A. 133.

Q. What bonds were they which sold at 133?

A. 7 per cent. Erie railway consolidated gold bonds.

Q. What was the lowest price at which bonds sold on that day?
A. 10.
Q. What bonds were those?
A. They were Virginia 6's deferred trust receipts.
Q. Excluding State bonds, what was the lowest sale of bonds of a private corporation?
A. Atlantic and Pacific income bonds sold at 25⅞. They were among the lowest corporation bonds. The guaranteed four per cent. bonds of the same company sold on the same day at about 82.
Q. How many bonds were sold on that day above par?
A. About $368,000.
Q. How many were sold below par?
61 A. About $391,500.
Q. How many were sold at par?
A. $7,000. There were $1,000 Colorado Coal and Iron Company six per cent. and $6,000 Louisville and Nashville railroad fives sold at par.
Q. Have you any tables showing the sales for the various months of 1887?
A. I have none prepared. It would take some time to compile them. They are not usually made up until the end of the year.

Mr. OLMSTED: I now offer statement showing the monthly range of railroad and canal bonds and other securities dealt in on the Philadelphia stock exchange in 1886, identified by the witness and marked "Exhibit A." I offer also a statement compiled from the official reports of the Philadelphia stock exchange for the month of November, 1886, identified by the witness and marked "Exhibit 48;" also a statement compiled from the official quotations of the New York stock exchange for the month of November, 1886, identified by the witness and marked "Exhibit 49;" also statement compiled from the official quotations of the Philadelphia stock exchange for the month of November, 1877, identified by the witness and marked "Exhibit 50;" also statement compiled from the official quotations of the New York stock exchange for the month of November, 1877, identified by the witness and marked "Exhibit 51."

Mr. THOMAS COCHRAN called on the part of plaintiff and sworn.

It is agreed that the examination of Mr. Cochran shall be considered subject to same offer and same objection as that of Mr. Smith.

Examined by Mr. OLMSTED:

Q. Will you state what is your present occupation?
A. I am president of the Guarantee, Trust and Safe Deposit Company, of Philadelphia—located in Philadelphia. "Of Philadelphia" is not part of the title.
Q. The place of doing business is in Philadelphia?
A. Yes; within a door or two — here.
Q. That is an institution of considerable magnitude, is it not?
62 A. We rank here among the older trust companies, and are considered prosperous.

Q. What is the general character of the business of the corporation?

A. Well, we have, you may say, these three lines: First, we receive deposits and make loans; second, we are a trust company, acting as executor or administrator in the management of estates, assignments, guardian of children, assigned estates, committees of lunatics; and, third, we are a safe-deposit company—that is, we have our safes in which citizens deposit their property, where it is in their own care, except the general care we take of it.

Q. In making loans for the company have you frequent occasion to consider the value of bonds and mortgages issued by corporations?

A. Oh, yes; hourly.

Q. You loan money upon them and take them as collateral?

A. Oh, yes. I am also a director in the Philadelphia Saving Fund Society, which is a moneyed institution. That is an institution with about $31,000,000 of deposits and surplus, which is all invested from time to time in bonds.

Q. In the trust department of the guarantee company of which you are the president you have large amounts of funds invested, I suppose?

A. Yes; a good many millions.

Q. And have, of course, to consider the value of the securities in which you invest those funds of trust estates?

A. Yes.

Q. Will you state, Mr. Cochran, generally, how you determine the value of a corporate bond or mortgage when you consider its purchase?

A. Well, we take every circumstance of value into consideration, and upon that make up our minds. What I mean by that is the location of the property, the condition of the property, the management, the earnings, the capability, and every factor which would give it value or detract from it.

Q. And do you or do you not consider the nominal or par value of the bonds of corporations as a substantial, fair, and accurate measure of their actual value?

A. Oh, no; the nominal value is fixed by the persons that
63 issue them. The actual value is what the public think of them.

Q. And depends——

A. And depends altogether upon circumstances. Even outside of value, it depends upon the rate of interest that they bear.

Q. Then, as I understand you, the nominal or par value is the value placed upon the securities at the time they are issued by the persons issuing them?

A. Yes; and the actual value depends upon those conditions which you have suggested—the value of the property covered by the mortgage, the rate of interest which the security bears, and others—not only its value, but its earning capacity. You may have a bond upon a property that is worth twice the amount of the bond, but by some mismanagement it may not have the earning capacity

to meet the interest, and the interest affects the value of a bond, of course.

Q. That would reduce it?

A. Yes.

Q. Does the length of time which a bond has to run affect its actual value?

A. Oh, yes—that is, a marketable bond. A long bond is worth more than a short bond to an investor. Twenty or thirty years in this country is considered a desirable bond. Now, in Europe a seventy-five or a hundred year bond is the most desirable. They sell better. They sell at a higher rate. Our new Reading mortgage is going to be a seventy-five year bond—$100,000,000 mortgage.

Q. I think you stated that the rate of interest had some weight in determining the actual value of the bond?

A. Its selling value—from which cause a four per cent. bond, whilst it brings more in the last four or five years than it did formerly, still a good four per cent. bond, if it brings from ninety to one hundred, would be considered a good price, whilst a seven per cent. bond, such as those of which there are a good many in Pennsylvania issued under legislation before the new constitution, will bring from one hundred and thirty to one hundred and thirty-five. Just that difference.

Q. Then there is that range of difference? The securities being the same, the difference in the rate of interest produces a difference in the actual values of bonds of from thirty to forty per cent.

64 A. Well, it depends on the length of the bond. If you take it on an equal length of time, a four per cent. bond running twenty years or a seven per cent. bond running twenty years.

Q. Then there would be a difference of how much?

A. Well, from thirty-five to forty per cent.

Q. When you, as president of your company, are considering the purchase of bonds and mortgages of corporations do you consider the quotations of the Philadelphia stock exchange?

A. We look to that. That is the open market; I mean the evidence of the open market.

Q. You consider, then, as I understand it, those quotations?

A. And the New York stock exchange also, because a great many bonds are listed in New York and are not listed here, you know.

Q. And you consider the quotations of those exchanges as fixing, to a large extent, the actual value of the bond?

A. Oh, they do; as much so as a real-estate exchange.

Q. Do you receive the printed list of quotations which are sent out under the direction of the stock exchange?

A. Every day—twice a day—two or three times a day.

Q. Mr. Smith has given us some figures made up from those quotations and I wanted to get your opinion of those quotations as to their accuracy. They are accurate as showing the official transactions of that exchange?

A. They are; yes.

Q. Do the same principles which you have suggested for the determination of the value of bonds of corporations apply the same to

bonds issued by the State of Pennsylvania as, for instance, to bonds issued by the State of New York or other States?

A. Certainly.

Q. Would you apply any different rule?

A. No; no different rule.

Q. Do you know, from your own knowledge, whether the bonds issued by corporations of any given State are confined in their ownership to residents of that State or is there a general mixing up of securities and holdings of them in various parts of the country independent of State lines? For instance, are there many bonds of foreign corporations held in this State; by foreign I mean bonds of any other State or country?

A. Yes; pretty largely.

65 Q. And bonds, I suppose, of Pennsylvania corporations are held in other States and countries?

A. Oh, yes; and stocks, too.

Q. Are the bonds of coal companies ordinarily considered as valuable as those of railroad companies?

A. No; they don't sell as well as railroad bonds. I am speaking of what you call desirable railroad bonds. There are several reasons for it. One is that there is generally a small issue of from $50,000 to $500,000; $500,000 is pretty large, while that is too small to have a general market. They are not known. They are only owned by people who make a personal examination to know what they do cover. Then, again, they are on a property that is working out their capital all the time.

Q. The same rule would apply, I suppose, to the bonds of oil companies or any other mining companies?

A. Yes. What I mean by a small market is this: You take a $20,000,000 mortgage, it is large enough to be distributed and have a market and be listed and be quoted all the time, and people are informed upon it. But if you take a bond that is just like a bond and mortgage of the country, where it is never heard of and people know nothing about it, except by making special examination, that affects the value of the bond. If you go into the market you can go to ten men, and nine of them have never heard of it, and they are not willing to make a bid.

Q. Ordinarily the bond of a mining corporation, the principal of whose property is being by its operations daily diminished, is considered less valuable than the bond of a corporation whose property is of a more permanent character?

A. Yes. In many instances manufacturing bonds are less valuable than even mining companies' bonds. The earning power of the plant depends upon so many circumstances—the prosperity of the country and the ability of the people that manage it—that if there is a turn in that, why the whole plant is not worth ten per cent. of what is cost them, and the realization would be more difficult even than on coal properties. There are not so many of those, however, just for that reason. They can't place them.

Q. The actual value of a bond, like the actual value of a piece of

real estate, depends a good deal upon what you can get for it if you want to realize on it?

66 A. Altogether.

Q. You have stated that your company is a trust company. It frequently acts in the capacity of administrator or executor, does it not?

A. Oh, yes; in all fiduciary capacities.

Q. You frequently have occasions to make or cause to be made inventories of the estates of deceased persons?

A. Oh, yes; millions every year.

Q. In the case of a decedent leaving a variety of bonds of corporations, would you consider an inventory proper or just which simply returned the par value of those bonds?

A. No. We wouldn't submit to it, because it is the first proof of our liability. The bonds might be worth fifty per cent. or one hundred and thirty per cent. on the dollar. Our realizing upon those bonds puts us to proof that we have got the best market prices for them. If they differ from the inventory, we would have to explain it. You take, for instance, the old Reading securities as they were here, most of them, for ten years. Bonds that are now worth par two years ago sold for thirty per cent. on the dollar. There was all that difference—par or nearly par. The first 5's were bought in from twenty-eight to thirty-three.

Q. The first 5's of the Reading Railroad Company?

A. Yes; the last blanket mortgage—$120,000,000. There were $60,000,000 of first 5's and $60,000,000 of second 5's.

Q. Does it sometimes or often happen that the bonds of corporations upon which the interest is regularly paid sell below par?

A. Oh, it happens; yes.

Q. The Texas Pacific, for instance?

A. Yes. That depends sometimes on the opinion of the public as to whether they will be able to keep the interest up.

Q. And ultimately pay the principal?

A. Well, they don't care for the principal. They never expect the principal. That is the reason a long bond is more valuable than a short one. They don't want it paid off.

Q. Well, they like to know that there is property back of it?

A. Well, that it has the earning capacity to pay the interest and to keep up the value of the property to a point that it will

67 either increase on what they have paid for it or not be any less; that is payment to them, you know.

Q. In purchasing the bonds of corporations which are listed upon the stock exchanges in New York and Philadelphia, you base your estimates of their value upon the quotations furnished by those exchanges?

A. Yes; we base our estimates upon that—that is, a thing is worth what it will bring, and when you put it on the market, if it is listed in Philadelphia or New York, or either one of them, or both, why it is only worth what it will bring there, because that is the largest market we can get in the United States for that particular bond.

Q. And these printed lists which you stated you receive daily, printed under the direction of the exchanges, you consider accurate and reliable evidence of the transactions taken place there?

A. We do. We take them. They are not what in law would be called official, but they are as near official as those recognized bodies issuing them can make. They would be taken in the courts as evidence of sales at certain times.

Q. At all events, in your business you rely upon their accuracy?

A. That is, the court would allow a broker to refer to them to refresh his memory.

Q. And in your business you rely upon the accuracy of those lists?

A. Oh, yes.

Mr. GEORGE C. THOMAS called on behalf of plaintiff and sworn.

It is agreed that the examination of Mr. Thomas shall be considered subject to same offer and same objection as in the case of Mr. Smith.

Examined by Mr. OLMSTED:

Q. Where do you reside?

A. I reside in the city of Philadelphia.

Q. What is your occupation?

A. Banker.

Q. Will you state, if you please, with what banking institutions, if any, you are connected, and in what capacity?

A. I am a member of the firm of Drexel & Co., of Philadelphia, and of Drexel, Morgan & Co., of New York, and J. S. Morgan & Co., of London.

68 Q. It is scarcely necessary to ask you as to the character of the business of your firm, it is so well known, but I would like to have it upon the record.

A. Besides the banking business and foreign exchange it covers large dealings in both corporation, State, and municipal securities, extending over many years and covering very large transactions.

Q. Very large transactions?

A. Yes, sir.

Q. It is a business which requires you, then, to determine often the value of the bonds of corporations of the State of Pennsylvania and of other States?

A. It does, sir.

Q. I wish you would state, Mr. Thomas, whether or not, in your business in dealing in such securities in actual life, in actual every-day business transactions, you consider the actual value of corporate bonds as a substantial or fair, equitable measure of their actual value—nominal or par value—is it a fair indication of their actual value?

A. No; the par value of a security has nothing to do with the prices at which it can be bought or sold on the market. There are so many matters that enter into it that many securities sell at a very high rate of premium where others would sell at a discount.

And a matter where everything is equal and the securities considered undoubted—I mean that which is pledged for the bonds—the market price is determined by the length of time the security has to run and its availibility for purchase and sale. By that I mean that the security might be just as good as a Pennsylvania railroad or a Reading railroad or a Lehigh Valley railroad bond, but it would not bring an approximate price, because it could not be so readily disposed of. For instance, suppose that bonds were issued on a property in the city of Philadelphia, we will say worth $1,000,000, and this property was mortgaged for $400,000 and four hundred bonds were issued for $1,000 each. Those bonds would not bring an approximate price to the bonds of the railroads I have just mentioned, because the mortgage would be so small that they would not have the range of market that the others would, the Pennsylvania railroad bonds being quoted not only in Philadelphia but in
69 London; that being the case also with Reading railroad issues and also with the Lehigh Valley railroad issues.

Q. Other things being equal, can you state what would be the difference in value between two railroad bonds, one having five years to run and the other twenty and bearing interest at six per cent., considering them both gilt-edged bonds?

A. Well, to answer that question I would have to refer to the tables. I don't keep those things in my head.

Q. There would be a considerable difference?

A. Yes; there would be a difference based upon that which the investment would pay.

Q. You would pay more for a six per cent. bond having twenty years to run?

A. Yes, sir; unquestionably.

Q. You would expect to get more if you would sell?

A. Yes, sir; and the market shows it.

Q. Other things being equal, does the rate of interest which a bond bears have any effect in determining its actual value?

A. Unquestionably. As money is now, a bond, all things being equal, reduces itself to a four or a five per cent. basis at par.

Q. Then a bond which bore seven per cent. interest would be about two-fifths higher in actual value than one which bore five per cent.?

A. Yes, running the same length of time; and, of course, in the calculation it is always taken into consideration the loss that a party sustains by the loss of interest on the premium which he pays for the bond; that is taken into consideration.

Q. Does the character of the property by which the mortgage is secured affect the value of the bond as between, for instance, a railroad company and a coal company? Which would be preferred, if either?

A. The railroad company.

Q. Can you state some of the reasons why the bond of a railroad company would be preferred to the bond of a coal company?

A. Well, the reason would be this: The railroad company would have, in the first place, all its property mortgaged to secure the

bond, and its franchises, too; and not only so, but the railroad would be enabled to do business of various kinds, and have a variety of business, not depending upon one single thing.

70 There might be times when a large number of passengers would be carried over its railroad, and it is a thing which does not determine as a bond of a coal company would.

Q. It does not depend so much on one contingency?

A. No; on one contingency. Of course, what would materially enter into this matter would be the sinking fund that would be provided by the local coal company if it were kept up, because a dividend from a coal company is like a dividend from a flour barrel. It is all gone some day.

Q. Then, as I understand the answer which you have so clearly given, the difference, in other words, lies in the fact that the property of a railroad company is kept up, whereas that of a coal company is being constantly depreciated by the operations of the company?

A. The railroad is likely to do as much and more business a hundred years from now, whereas there would not be that much coal a hundred years from now.

Q. Are you a member of the Philadelphia stock exchange?

A. I am, sir; and I was a member of the New York stock exchange, but when I came here I sold my seat in that.

Q. The Philadelphia stock exchange is a place where corporate securi-es are daily dealt in?

A. Very largely.

Q. Do you in your business in your banking-house rely largely upon the printed quotations of the Philadelphia stock exchange?

A. Oh, constantly. We not only cable them to London every few days, but we rely upon them implicitly, I might say. Of course, they are like everything else that is human, subject to mistake, but they are very carefully guarded and they are watched by over two hundred members, and if a mistake creeps in it is almost instantly rectified and corrected on the sheet the following day.

Q. There is very great care exercised in the matter of the quotations on the Philadelphia stock exchange, and they are relied upon by bankers and brokers generally as giving accurate prices in genuine transactions in bonds at that place?

A. They are.

Q. Do bonds of corporations of the State of Pennsylvania frequently sell at that exchange below their par value?

A. Oh, yes.

71 Q. And sometimes other bonds of similar corporations sell above their par value?

A. Very much so.

Q. Do they more frequently sell at par or at prices ranging either above or below par?

A. They sell more frequently above par or below par. It is very rarely that a bond is quoted exactly at par.

Q. Is or is not the price of a bond, the price at which bonds of well-known corporations sell at the Philadelphia stock exchange—does that not show the judgment of the men best able to determine

the actual value of that bond? Take a large corporation whose securities are every day before the public.

A. It does. Of course, there might be an exception to this rule in what we call a fancy price. A man might have $96,000 and want $4,000 to complete his $100,000, and he might pay a fancy price for the $4,000.

Q. But ordinarily the prices determine the judgment of the best man?

A. Yes; and you will find upon an analysis of such quotations that they determine about what is considered a fair rate for money at the time, under the circumstances. The first question that is asked us when a man comes to buy bonds is, "What will they pay?"

Q. That is, what interest will they net?

A. Yes, sir.

Q. Does it ever occur that the bond of a Pennsylvania corporation upon which interest is regularly paid sells below par?

A. Yes, sir; I happened to see such a quotation this morning.

Q. Can you state some circumstances?

A. The bonds of the Pennsylvania Canal Company, I think. I won't be certain. I think in reading the papers this morning I saw a sale at 75.

Q. The interest is regularly paid?

A. Regularly paid.

Q. Does or does not the question of doubtfulness as to the ability of the company to continue to pay its interest affect the value of the bond?

A. Well, these bonds are all guaranteed as to interest by the Pennsylvania Railroad Company up to the time of the maturity of the bonds.

72 Q. Then in this case it must be doubts as to the ultimate payment of the principal which affects the value?

A. Some doubt affecting the maturity of the loan.

Q. You have frequent experience with bonds, I suppose, upon which the interest is paid for the time being, which sell below par, as, for instance, New Orleans Pacific?

A. New Orleans Pacific—all of those Texas Pacific issues have sold below par. Warren & Franklin bonds sold below par, and Union & Titusville bonds. Well, Philadelphia, Wilmington and Baltimore 4's sold quite frequently below par, and there was no question as to the interest on them.

Q. Will you state, Mr. Thomas, whether or not your firm has purchased and sold residents of Pennsylvania many bonds of corporations of other States?

A. We have.

Q. Amounting to——

A. Very large amounts.

Q. Millions of dollars?

A. Yes, sir.

Q. And do you know or believe that many or most of them are now held by residents of Pennsylvania?

A. I should think a large number of them were.

Q. Do some of those bonds sell below par?

A. Well, now, let me say that we may sell bonds to people that we have bought ourselves, and again we may buy large amounts of bonds for persons, acting as brokers, for our business comprises both.

Q. My object is to ascertain whether or not, within your knowledge, there are many bonds of foreign corporations held by residents of Pennsylvania?

A. Well, I want to try to cover that. Our business is very large in both these particulars and we are continually buying bonds as brokers, which have been listed in New York and other cities, which so far as we know are still held by parties residing in this State; and in addition to that we have sold bonds which we have bought ourselves of corporations outside the State of Pennsylvania. For instance, we have now some Easton and Amboy railroad bonds guaranteed, principal and interest, by the Lehigh Valley railroad. That is a corporation outside of the State of Pennsylvania.

73 Q. Do you know of your own knowledge whether many of the bonds of the Texas and Pacific Railroad Company are held within the State of Pennsylvania?

A. Oh, I know that a very large number of the Eastern division bonds are held here in the State of Pennsylvania.

Q. Do they usually sell above or below par?

A. Those bonds—I think the Eastern division bonds have sold above par, but I know that for a time they sold below par, for I recollect a transaction I had in them once somewhere about 90.

Q. Do you know whether many of the bonds of the New Orleans Pacific are owned in Pennsylvania?

A. I think there are, but I am not so thoroughly posted about them as I am about the Texas Pacific, Eastern division.

Q. Do you know whether or not any Mexican Central bonds are held in Pennsylvania?

A. No; I do not.

Q. But there are a good many bonds held in Pennsylvania of corporations of other States which sell below par—corporations in other States that sell below par?

A. Oh, yes; I should think there were. I have no positive knowledge, however, on this subject. I am only expressing my own judgment.

Q. If your firm had learned that a quantity of bonds were for sale in a distant city, and you had sent an agent there to examine those bonds and make a return to you of their value, and he returned with simply a list of the securities and a statement of the amount of their par value, would you consider that a substantially accurate ascertainment of the actual value of those securities?

A. Oh, no, sir; we would not consider that any information whatever, excepting as to the amount of the bonds. We would require—in all cases we require to make the most careful investigation. If a railroad bond is offered for sale, we want to know, first, that the railroad company has a right to mortgage the property which it puts up as security for the bonds. Then we want to know what that

property consists of, and we want to know, in many cases, whether the stockholders have given to the board of directors the right to make such a mortgage. In some cases it is necessary to hold
74 meetings of the stockholders to confirm the action of the board of directors. And so many things enter into it that we are most careful in all these particulars. Our reputation is at stake, and we have all these matters examined by the most competent legal talent we can procure.

Q. Then you ascertain, as far as possible, the value of the property?

A. The value of the property, whether there are any other liens against it; and not only the value of the property, but what the property is worth as a producer.

Q. Its earning capacity?

A. Its earning capacity.

Q. You also take into consideration the price at which the stock sells at the public exchange?

A. Certainly; and if there are any other bonds of the company on the market, what they sell at.

Q. Is there really any more difficulty in determining the value of bonds than there is in determining the value of corporate stocks?

A. Not any. In fact, you can get information as to the value of bonds issued by railroads much better than you can get an idea as to the value of securities issued by towns and cities, because the property of a railroad and its earning capacity is so easily determinable, whereas in municipal securities the value is put down according to the ideas of the citizens.

Q. And it is at least equally easy to determine the value of the bonds as it would be of the stock of a corporation?

A. Certainly.

Q. Do or do not the same rules which you have mentioned—the same elements and conditions which affect the value of a bond issued by a corporation of Pennsylvania—enter into the determination of the value of a bond issued by the State of New York or some other State?

A. Unquestionably, the same rules would hold good in one as in another.

Q. And a bond and mortgage issued by an individual—would you apply the same or a different rule in determining the value of that?

A. The same general principles, excepting that in a bond issued by an individual you would want to know his own ability behind his property.

75 Cross-examined by Mr. WOLVERTON:

Q. I understand, Mr. Thomas, from your examination that the board rates or the prices at which bonds sell on exchange is not really an accurate index always of the value of the property—that is, the property may be worth the face of the bond and still the bond sell under par.

A. The market value of a security is not always its intrinsic value, although I consider it a good index of it.

Q. In the purchase of bonds in market do the purchaser and seller take into consideration, whether it is sold for less than par value or above its face value, the fact that the act of 1885 imposed a tax of three mills for State purposes; does that fact enter into the market value of the bond, whether it sells above par or below?

A. No; I hardly think it does. I never have heard it brought up in dealings in the stock exchange.

Redirect examination by Mr. OLMSTED:

Q. You are familiar with the testimony which has been given by Mr. Winthrop Smith and Mr. Thomas Cochran. I'd like to ask you whether you corroborate that testimony?

A. I have read the testimony of Mr. Winthrop Smith entirely through; excepting as to certain matters of quotation with which I am not familiar, I agree with all he has said. Of the testimony of Mr. Cochran I have only read portions and, as far as I have read, I coincide with his views.

Q. Would you consider that a law—I ask you now as one dealing daily in corporate securities and accustomed to determining their values, and I may say an expert in that matter, because your success, the success of your house, depends upon the manner in which you do that; is that not so?

A. Yes sir; I believe it is.

Q. Would you consider that a law which taxed all interest-paying bonds issued by Pennsylvania corporations at their nominal value worked substantial justice to the holders of those bonds as between one another.

(Objected to by counsel for defendant as a conclusion of law. Question withdrawn.)

76 W. W. JENNINGS, plaintiff, recalled.

Examined by Mr. OLMSTED:

Q. I notice that *in* your letter of December 2, 1887, addressed to Mr. Alderson, the treasurer of the company, is written upon the letter paper of the Commonwealth Trust Company and is signed by you as president. The others are signed by you individually. I would like to ask you whether you own these bonds in your individual capacity or as president of that company?

A. I own them in my individual capacity. In that one letter the typewrite- placed "Pres't" after the blank space left for my name, as he usually does for all letters he writes for me.

Q. Have you any objections to stating at what price you purchased these bonds?

A. I'd prefer not to. I'd be very glad to get seventy-five for them after the testimony I've heard to-day.

Q. I understand you to say that you would be willing to sell these $20,000 of bonds at seventy-five cents on the dollar?

A. Yes, sir.

Q. You have testified that you are the president of the Commonwealth Guarantee, Trust and Safe Deposit Company of Harrisburg?

A. Yes, sir.

Q. State whether or not your duties as president of that company require you to examine frequently into the value of corporate bonds.

A. Well, not to a very great extent.

Q. You take them sometimes as collateral security?

A. Yes, sir.

Q. Sometimes buy them for the company?

A. We very seldom buy for the company; we do buy occasionally.

Q. In your capacity as president of the First National bank have you frequent occasion to determine the value of corporate bonds?

A. Yes, sir.

Q. State whether or not you consider the par value of bonds issued by corporations of the State of Pennsylvania as a substantially accurate indication of their actual value.

A. No, sir; I do not.

77 Q. Without taking up the time to go over the same matter over and over again, you have heard the testimony which has been taken to-day—the testimony of Mr. Smith, Mr. Cochran, and Mr. Morris. State whether or not, from your business experience, you can corroborate the statements they have made concerning the limits and conditions by which the actual value is to be determined.

A. I fully agree with the statements which they made with regard to what determines the value of bonds on the market.

Q. Does your trust company act in the capacity of guardian, administrator, or executor?

A. Trustee; yes, sir.

Q. In that capacity do you have occasion to determine the value of corporate bonds?

A. Yes, sir. We have a number of them placed in our possession—of estates.

Q. When you are acting as trustee or guardian or executor, in cases where an inventory is required to be made of estates, would you accept an inventory which stated simply the par value of the bonds comprising the estates?

A. No, sir; we would not. We would want to know the quotation on the market, and that quotation would govern us to a very great extent, if they had ruled near or about the present quotation for a time. If there had been a change very lately we would probably not. We would want to know more than the quotation on the market.

78 STATE OF PENNSYLVANIA, } ss:
City of Philadelphia, }

I certify that the above witnesses were duly qualified and examined, at the place mentioned in the above caption, pursuant to the

annexed rule of court and agreement of counsel, and that their testimony was as above set forth.

In witness whereof I have hereunto set my hand and affixed my notarial seal.

——— ———,
Notary Public.

79 This is Exhibit 41 referred to by the witness upon his examination before me.

JOHN F. LEWIS,
Notary Public.

EXHIBIT 41.

Israel W. Morris, pres't. W. C. Alderson, treas.

Office of the Coal Ridge Improvement and Coal Company, No. 228 South Third street.

PHILADELPHIA, *December 1st*, 1887.

W. W. Jennings, Esq.

DEAR SIR: Your favor of 30th ult. is at hand. The company has for some time been unable to pay its full interest, although its business is improving, and is not in funds to pay the interest due to-day.

The holders of most of the bonds are willing to agree to an extension of time, and we will be glad if you will unite with them to postpone, say, for two years the payment now due. We think that in the end your interests will be benefited by such an arrangement.

Very truly yours, WM. C. ALDERSON, *Treasurer.*

This is Exhibit 42 referred to by the witness upon his examination before me.

JOHN F. LEWIS,
Notary Public.

EXHIBIT 42.

Israel W. Morris, pres't. W. C. Alderson, treas.

Office of the Coal Ridge Improvement and Coal Company, No. 228 South Third street.

PHILADELPHIA, *December 5th*, 1887.

W. W. Jennings, Esq.

DEAR SIR: I am in receipt of your letter of 2d inst., and regret your unwillingness to accept an extension of time.

80 We have concluded to pay the 6 months' interest due upon your bonds December 1st, 1887, and I hand you herewith certificate of deposit in Western National bank, No. 2513, to order of this company, endorsed to your order, for $570, being the amount of six months' interest due December 1st, 1887, upon bonds Nos. 1 to

40, inclusive, less $30 for six months' tax at three mills per annum, deducted as required by the fourth section of the act of June 30th, 1885.

Yours truly, WM. C. ALDERSON, *Treasurer.*

This is Exhibit 43 referred to by the witness upon his examination before me.

JOHN F. LEWIS,
Notary Public.

EXHIBIT 43.

Israel W. Morris, pres't. W. C. Alderson, treas.

Office of the Coal Ridge Improvement and Coal Company, 228 South Third street.

PHILADELPHIA, *December 7th*, 1887.

W. W. Jennings, Esq., Harrisburg, Pa.

DEAR SIR: I have your letter of 6th inst., returning certificate of deposit for $570 and objecting to any assessment of your bonds at over 75 cents on the dollar; in reply to which I call your attention to the fact that the 4th sec. of the act of June 30, 1885 (P. L., 193), allows the officers of this company no discretion in the matter, but requires us to assess and collect the tax upon the nominal value of the bonds, regardless of what they sell for in the market. The State claims the tax from us upon the par value of the bonds, and we have no alternative. We are quite ready to pay you the $570, but are advised by counsel that we are required to deduct $30 for taxes.

Very truly, WM. C. ALDERSON, *Treasurer.*

81 This is Exhibit 44 referred to by the witness upon his examination before me.

JOHN F. LEWIS,
Notary Public.

EXHIBIT 44.

W. W. Jennings, President. Chas. L. Bailey, Vice-president. W. B. Hart, Sec'y and treas.

Capital, $250,000.

Commonwealth Guarantee, Trust and Safe Deposit Company.

HARRISBURG, PA., *30th Nov.*, 1887.

W. C. Alderson, treasurer Coal Ridge Improvement and Coal Company, Philadelphia, Pa.

DEAR SIR: As your books will show, I hold the first mortgage registered bonds of your company, Nos. 1 to 40, inclusive, $500 each,

amounting in all to $20,000. Please send me check for $600, the semi-annual interest due to-morrow, December 1.

Very truly yours, W. W. JENNINGS.

This is Exhibit 45 referred to by the witness upon his examination before me.

JOHN F. LEWIS,
Notary Public.

EXHIBIT 45.

W. W. Jennings, President. Chas. L. Bailey, Vice-president. W. B. Hart, Sec'y and treas.

Capital, $250,000.

Commonwealth Guarantee, Trust and Safe Deposit Company.

HARRISBURG, PA., 2*d Dec.*, 1887.

Wm. C. Alderson, Esq., treas. Coal Ridge Improvement and Coal Co., Philadelphia.

DEAR SIR: Yours of the 1st inst. is at hand. I am unwilling to agree to any postponement of the interest due. The mortgage securing the bonds provides for foreclosure upon failure to pay interest when it becomes due, and unless the same is fully and
82 promptly paid I shall be compelled to institute the proper legal proceedings for its collection.

Yours truly, W. W. JENNINGS, *Pres't.*

This is Exhibit 46 referred to by the witness upon his examination before me.

JOHN F. LEWIS,
Notary Public.

EXHIBIT 46.

W. W. Jennings, President. Chas. L. Bailey, Vice-president. W. B. Hart, Sec'y and treas.

Capital, $250,000.

The Commonwealth Guarantee, Trust and Safe Deposit Company.

HARRISBURG, PA., *6th Dec.*, 1887.

W. C. Alderson, Esq., treasurer Coal Ridge Improvement and Coal Company, Philadelphia.

DEAR SIR: I am in receipt of your letter enclosing check for $570 and informing me that you have deducted a tax amounting to $30 at three mills for six months, which you must have calculated upon the face of the bonds.

They are not worth more than seventy-five cents on the dollar and have not sold above that for several years. It would be unfair to tax them at par.

I might be willing to consent to a deduction for taxes based upon the fair value of the bonds, but must decline to be taxed upon a valuation twenty-five cents above what I would be willing to take for the bonds.

I therefore return your check.

Yours very truly, W. W. JENNINGS.

One enclosure.

EXHIBIT A.

Monthly Range of Railroad and Canal Bonds and Stocks in Philadelphia.*

The tables following show the highest and lowest prices, monthly, of all railroad and canal bonds and stocks * sold at the Philadelphia stock exchange, except of a few stocks * sold much more actively at the New York board and included in the New York prices.

The prices are compiled from actual sales made at the board, and for the active stock * sales of round lots only are taken as a standard, except in those cases where the sales are mainly in small lots and no prices would be obtained unless such sales were taken.

1886.

Bonds.	January.		February.		March.		April.		May.		June.		July.		August.		Septem'r.		October.		November.		December.	
	Low.	High.	Low.	High.	Low.	High.	Low.	High.	Low.	High.	Low.	High.	Low.	High.	Low.	High.	Low.	High.	Low.	High.	Low.	High.	Low.	High.
Railroad.																								
Alleg. Val. reg...7 3-10	119½	120	119	119¾	120	120	.....	.....	122	123⅜	.....	.....	122	122	122½	122½	122	122	121½	121½	121	121	.....	.....
Income..... 7	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
B. & O., E. Side..... 5	107⅜	108	107⅜	109¾	109	110⅞	109⅝	110¾	110	112⅜	12	12	13¼	21¼	20	22¼	22	22½	21	22	22	22	23	24
Bely. Del. 1st..... 6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	109¾	111¼	111	112¾	112	113	113	113¼	113	113¾	113	114¾	111¼	112
3d, 1887 6	104¼	104¼	102	102	102	102	.....	.....	102	102	.....	.....	.....	.....	.....	.....	119	119	119¾	119¾	.....	.....	115	115
Bell's Gap 1st, 1905... 6	107½	107½	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	101	101	101¾	101¾	101¼	101⅝	101⅝	101⅝	103	103
1st, 1893..... 7	116	116	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Consol..... 6	103	105	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	114	114	.....	.....	112	112	.....	.....	.....	.....
Cam. & Am. M., cp. '89 6	109	109½	109	109¾	109½	110¼	110¼	110¾	107	108	106	106	.....	.....	.....	.....	.....	.....	.....	.....	109	109	.....	.....
Coupon, 1889..... 6	.....	.....	107½	108	.....	.....	.....	.....	.....	.....	107½	108¾	108	108⅝	107¾	108¼	107	108½	108	108⅜	105¼	105¼	105⅝	106¼
Catawissa new.. 7	128	130	128¾	130	130	130	130	130	134¾	132½	.....	.....	.....	.....	.....	.....	106	106	107	108½	105½	106¼	.....	.....
84 Cam. & Atl. 1st.. 7	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	130	130	128	128	.....	.....	129¾	129¾	129½	129½
Cam. & Burl. Co. 6	116	116	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	118	118	.....	.....	113	113	.....	.....	.....	.....	.....	.....
Col. & Cinn. Mid..... 6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	105	105	.....	.....	103	105	103	103	102⅜	102¾
Connecting 1st..... 6	.....	.....	123½	123½	122	122	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	124	124	.....	.....	.....	.....	.....	.....
Clearfield & Jeff..... 6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	106	108	107¾	108	107¾	108
Dela're R. R. 1st.... 6	.....	.....	.....	.....	.....	.....	117	117	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Del. & Bo'd B'k 1st. 7	132	133½	129	132	133	133	134½	132	132⅝	132⅝	134	134	133	134	129⅝	129½	130	130	.....	.....	130	130	130	130
Easton & Amboy.... 5	112	112	.....	.....	115	115	.....	.....	.....	.....	.....	.....	.....	.....	116	116	.....	.....	116	116	.....	.....	.....	.....
Elmi. & W. 1st, 1910. 6	117	117	.....	.....	120	120	122½	122½	.....	.....	.....	.....	118	118	118	118	120	120	121	121	.....	.....	.....	.....
Perpetual..... 5	.....	.....	108	108½	.....	.....	.....	.....	.....	.....	105	105	.....	.....	.....	.....	.....	.....	106	107	.....	.....	.....	.....
Harrisburg 1st..... 4	.....	.....	.....	.....	.....	.....	108½	108⅝	.....	.....	.....	.....	113	113	.....	.....	104	104	.....	.....	.....	.....	.....	.....
Hun. & B.T. 1st, gld.. 7	112¼	112¾	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	110	110	.....	.....	.....	.....

*Attached to this was a table of prices of stocks; but it is omitted, as it was not offered by Mr. Olmsted.—J. F. L., *Notary Public.*

2d, 1895	7														117	117											
3d, cons., 1895	5	89	90	90	100	99	100	96½	98	95	97	98	99	98	100	98½	89½	96¾	101½	100	100	99¾	101½	100½	101		
Ith. & Athens 1st	7	107	107																								
Lehi-h Val. 1st, cp	6	124	124	125	125	126	126			126	126	122½	123½	125½	125½	125¾	126			126	126	124½	126	122½	122½		
1st reg., 1898	6	125	125			126	126					124	124	125	125	125	125	125¾	225¼	126	126	125	126	123¼	123¾		
2d reg., 1910	7	140½	141	142	143	140	141	140	141	141	143	143	143⅝	142½	141	146	148½	140	144½			141	142	143	145		
Cons. M. R., 1923	6	130	135	134	135	136	136⅜	133	135	133½	136	133½	135	136	137	137	138	136	136	136	137⅞	137	138	134	135		
Cons. M., cp., '23	6	131	135	133½	135½	135¾	136	135½	135⅛			133½	135	136	136	138	138			137	137	138	138	135	135		
N. O. Pac. 1st, 1920	6	53¾	60	62¼	63	60	60	62⅞	62⅜	59⅞	61	61⅝	63⅞	64	65	76¾	78¼			79⅞	80½	80	82⅜				
N. Y. & Long Br	5							108	111									106½	106½								
N.Y.,Ph & Nor. 1st	6	102½	104	104	108¼	110	110½	107½	109½	108	110	110	114⅜	110	111	108	111	107	107½	107	110½	110	111¼	108½	110		
Income	6	45	45	45	46	46	47	46	46½	47	50	51	59	61	61			54⅞	55	52½	55						
Norf & W. new R. 1st	6	100	105	105	107	106	106	106	106	106	109	108¾	109	112	112			112¼	112¾	109	109	109	114				
Debenture	6	66	69	70	70			69	72			73	83	82	85	87	89	89	90	89	89	89	90	90	90		
Gen. mort	6			107½	107½							108½	108¾			111½	111½							112	112¼		
North. Central—																											
Gen. M. 'A,' cp., 1926	5	106¾	106½			109¼	109⅞	110	110⅛	110⅛	110½	110¾	111	109½	109½	110¼	110¼	110	110½	110½	110½	110½	111	111⅓	111¼		
Nor. Cen., ser. 'B'	5			108	108	109	109			109	109¼	109½	109½					109½	109½	109½	109⅞						
Gen. M. cp., 1904	6							122½	122½																		
1900	6															121	121										
Consol., 1925	4½			108⅞	108⅞	108⅜	108½							112	112			110⅜	110¼	107⅞	107⅞	107⅞	107⅞	107¾	107¾		
85 No. Pac. gen. M	6	112	112			114⅞	114⅞			116⅛	118⅛	118⅝	118⅛	116⅝	116⅝	117½	117⅛	115½	115⅞					117½	117½		
2d	6	91¾	93	95¾	96	96½	98			96	96	99	100⅞			101½	101⅝	102⅜	102¼	101½	102	102½	102½	102⅞	103½		
Nor. Pa. 1st, 1896	7	127	127	127	127	128	128	128	129½			128	128	127½	127½	127¾	127¾	124	124	127	127	124	124	125½	124		
Gen. M. cp., 1903	7					132¾	132¾	132¼	132½					133	133	132	132	132	132¼	132½	132¾						
Gen. M. R., 1903	7	128½	130					134	134	135½	135½			133	133	133	133	132¼	132½			134	134				
Debentures	6			116	116																	112	112				
P. Tit & Buf., cp., '96	7					36	40	35	35					35	35			34	34					35	35		
Pa. & N.Y.C. & R., '96	7	121	121	121	121	121¼	122½	123	123	123⅛	123⅛	120	120	119½	119½			118	118	122	122	118	118	118¾	118¾		
Reg. & cp., 1906	7	132	132					135	135	136	136			131	132	132½	132½	130	131	135	135	128¼	128½	129	129		
Penn. gen. cp., 1910	6	130	130	133½	133⅛			130	136	131	131	132½	132⅝	135	135					130	132	130	131½	132	132		
Gen. reg., 1910	6	131	132	133	134			128¾	129	129½	133	132	133⅝	135	136	137	137½	137	137	132	133	133	133	133½	135⅝		
Cons. reg., 1905	6					126½	126½					126	126	126½	128½			127½	127½								
Cons. coup., 1905	6			125	125	126	126	126½	126½			126	128½	128	128	128	128			128	128	128	129⅛				
Cons. reg., 1919	5	112½	112½			113	113	113	113			110	112					113	113	113	113¼						
Cons. coup., 1919	5											112	112	112½	112½	115½	115½					113¾	113¾				
Pa. Co., reg., 1907	6	110	110	109	110½	111	111	111	111	111	111	111	111½	109	109¾	109½	109½			110	110	110	110	109½	109½		
Reg., 1920	4½	101⅜	104¼	105	105															106⅛	106⅛						
Con. con., 1920	4½			105	105	106⅝	106⅝	106⅞	106⅞																		
Perkiomen 1st, '87	6	95	95	95	96	97	101	99	99	99	100¾	100½	101	101	101	101	102	104⅜	102	99	99½	99⅜	100	99⅝	99¾		
Phil. & Erie 2d, '88	7	107	108½	107	108			108¾	108⅜	108¼	108⅞	109	109⅜	106½	106½	107¼	107¼			106½	108	106½	107	108	108⅞		
Gen. mort., 1920	5	111⅜	111½	112	113	113	115	112	112¾	114	114½	114	114¼	114	114	115	115	112½	112½	114	114	111¾	113	111½	111½		
Phil. & Read. 1st s	5	37¾	47	41	77	67	80	52⅜	65	58¾	62¼	57½	60	59	62	61½	62	60	75¾	70	77	70	74½	68	70		
Con. 2d ser	5	21	24	24½	35½	33	42	30	34½	30	30	30	31	30½	35	32	33	32	48	46	47⅞	46	52½	50	55		
1st, 1910	6	122	122			125	120	129	129												127½		127½				
2d coup., 1893	7	118	118	119	119	120	121½	117¼	117⅜			116¾	116¾	116¾	116¾	117	117	118	118	115½	115½	115	115½	113	114		
Phila. & Reading—																											
Improvement	6	102	104	103½	107	107	107⅛	104	104¾	102	103¾	103⅜	104	105	105½	105¾	105¾	104	105	105	105	104½	105¼	105	105		
Cons. coup., 1911	7	122	123	125	129	128½	132	126½	128	127	128	125½	126¼	127¼	128½	128	130	128¼	128¾	128⅞	128¾	130	127⅝	123	124½		
Cons. reg., 1911	7	122	123⅜	123¾	128	126¾	132	126½	126½	127	128½	125	128½	128	128½			129	129	128	129	130	127½	122	124		
Cons. gold., 1911	6					118	118	114	115		97⅝	115	115	116	116	116½	117½			118	119	115	115	110	110		
Gen. M. g'd, 1908	6	80	89½	89	99½	97½	104¼	93	100¼	92¾	96½	96¼	100⅜	97¼	101¼	97½	101⅜	97½	106	101	104⅞	102	106	98½	105⅞		

Railroad and Canal Bonds in Philadelphia, 1886—Continued.

Bonds.	January.		February		March.		April.		May.		June.		July.		August.		Septem'r.		October.		November.		December.	
	Low.	High.	Low	High.	Low.	High.	Low.	High.	Low.	High	Low.	High.	Low.	High.	Low.	High	Low.	High	Low.	High.	Low.	High.	Low.	High.
Railroads.																								
Gen. M., 1908 7	78½	88¾	88¾	97½	96	103¼	92	99¼	91¾	52¼	95½	98	96⅞	100½	98	100½	97⅜	104⅜	100½	104⅝	101⅛	103½	98	102⅓
Income coup.,'96.. 7	40	51½	46	59⅜	51½	70	45	55	45	.....	51	53	52	55¾	52	52	50	62¾	57	61	60½	67⅝	55½	66
86 Debenture 6	15	15	22½	25	.....	.....	21	21	24	24	.....	.....	.....	.....	27	27	30	43	41	43	43	51	47	49
Scrip 6	.....	.....	.....	.....	30	30	23	23	.....	.....	25	25	.....	.....	.....	.....	.....	.....	34	34	34	36	37¼	40
Deferred inc.....	8	10	7	8	8	8	.....	.....	5	5	.....	.....	.....	.....	.....	.....	6	9	9	9	9½	14½	10	15
Con. adj. sep.,'88. 6	38	45	44½	55	50	64	43	52	46	51	50	52	52	53	48	50	40¼	61	58	60	60	66	55	63¾
New conv.,1893... 7	22	25½	24	30	29¾	35	25	27¼	24	24½	26	30	24	31	31	32⅜	30	45	42	43½	45	62½	42	58
New con. ex-c..... 7	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	28½	28¼	.....	.....	40	41½	41	58¾	54	59⅛
P. & R. C. & I.Var. 7	52½	52⅛	52½	52¼	70	70	70	70	95	95	75	75	70	70	71	92	72	72	72	75	72	96	.....	.....
Debenture 7	.....	.....	20¼	22½	27	27	.....	.....	.....	.....	.....	.....	27	27	.....	.....	41	45	42	45	45	50	.....	.....
Phil.,W. & B.Tr.cts. 4	100	101¾	101¼	102⅛	101⅝	10 1/2	101	102	102	102¾	101¼	103¾	102¼	103¼	102¼	103⅛	102	102½	101¾	102¼	101	102¾	101	103
Phila., C. & St. L. cp. 7	123½	123½	.....	.....	122½	123	122⅜	123	.....	.....	124	124	124⅜	125	122	122	121½	122⅛	122	122	122	122	.....	.....
Reg., 1900..... 7	.....	.....	120½	121	122	122½	122⅛	122½	122⅛	123½	.....	.....	.....	.....	.....	.....	.....	.....	122	122	121½	122	122	123
Sham.Val.& Pott.c. 7	.....	.....	.....	.....	125	125	.....	.....	.....	.....	.....	.....	121	121	.....	.....	.....	.....	123	123	126	126	.....	.....
Shenando. Val. 1st.. 7	70¾	72	69	71¼	70	76	75	75¾	70¼	75	74½	80	80	80½	80½	82⅛	.....	.....	80½	84½	84	97	95	96
Gen. mort..... 6	.....	.....	.....	.....	32	32	30	33½	30	30	30½	31	30	40	37	42	37	37	37	40	40	48½	45⅞	45⅞
Steub. & In. 1st cp.. 5	108	108	108	110	110	110	112	113½	113	113½	113	113	113	113	.....	.....	109½	109½	110¼	110¼	113	113	.....	.....
Sunb. & Lewis. 1st.. 7	.....	.....	.....	.....	.....	.....	120	120	.....	.....	.....	.....	121	121	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Sun., Haz & W.,'28. 5	104¼	105½	105	105¼	105⅛	106¾	107	109	106¼	108	107⅛	108⅜	108	109	108⅜	108⅛	107	108	105	105	102	103	101	103
2d, 1938..... 6	100	102	100	101	101	103	100	102¼	98	100	98	102⅜	102	103	101¾	103	101	103	102	102	99¼	99⅝	99	99
Texas and Pacific—																								
1st gold, 1905..... 6	106½	106¾	103½	107	104	105	106	107	106½	107⅛	.....	.....	108	110	.....	.....	108	110	110	107½	107½	108	108	109
1st R. G. div.,'30.. 6	46⅝	50⅞	.....	.....	51¾	53¼	50⅝	51	.....	.....	54⅛	57⅝	55	66⅛	67¼	70¼	.....	.....	71	71⅞	71⅛	71½	.....	.....
Cons. gold, 1905... 6	68½	75	70¾	78¼	74	76	75	86	84	80½	85	90	88	96½	96	104⅞	99⅝	100	97¾	100⅞	97½	100	97¼	100
Un. & Titus. 1st,'90. 7	40	40	.....	.....	40	40	40	40	.....	.....	27	30	.....	.....	.....	.....	30	30	.....	.....	.....	.....	.....	.....
United N. J. cons... 6	.....	.....	.....	.....	113½	113¾	.....	.....	.....	.....	117	117	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Gen. mort..... 4	104	104	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	104¾	104¾	.....	.....	102½	102⅝	.....	.....	.....	.....	.....	.....
War. & Fr. 1st,'96... 7	108	110	108	108	105	108	103	104	103½	104¾	105	106	105⅝	114	.....	.....	.....	.....	109	109	105	105	.....	.....
W. Ches. cons.,'91.. 7	.....	.....	.....	.....	.....	.....	113	113	.....	.....	114¼	114¼	113¾	113¾	.....	.....	.....	.....	.....	.....	.....	.....	112¾	113
W. Jersey 1st,'96.... 6	117	117	118	118	118	118	117	118	.....	.....	.....	.....	117	117	117	117	.....	.....	116¾	116¾	116¾	116¼	.....	.....
1st, 1899..... 7	127	127	129	129	129	129	125	125	.....	.....	.....	.....	.....	.....	127	127	127	128¼	.....	.....	.....	.....	.....	.....
W. J. & Atl. 1st,'10... 6	.....	.....	.....	.....	107½	108¼	108¼	108½	.....	.....	108¼	108¾	109¾	109¾	.....	.....	106	106½	106½	107½	107	107½	.....	.....
W. Penna. 1st,'93... 6	111	111	113	113⅞	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	109½	109¾	104	105	.....	.....	108	108
Pitts. Br. cp.,'96. 6	109	110	113	113	115	115	112	112	112	113	113⅛	114	111½	111¾	.....	.....	.....	.....	111	111	111	111	.....	.....
West Shore guar.... 4	102½	102½	102⅜	103½	102⅝	103¼	102¾	102¾	102½	102⅞	103⅝	104⅝	102¾	103	100⅞	101¼	.....	.....	.....	.....	105	105¾	103¼	103¼
87 Canals.																								
Ches. & Del. 1st,'86.. 6	86	86	86	89	95	96	100	100¼	101¾	103½	102⅝	102⅝	.....	.....	.....	.....	.....	.....	90	95	.....	.....	94	94
Leh. Nav. exten....4½	110½	112	112	113	113	114	112½	113	113	113¾	113¼	113¼	112½	113	113	113	113	113	110	110½	110	110½	111	111
Conv. gold, 1894... 6	.....	.....	118	118	114	114	114	114	114⅛	114⅜	114	114½	114	114	114⅛	115	111⅛	111⅛	.....	.....	111⅛	111⅛	.....	.....

R. R. loan, 1897...	6	119	119	118¼	118¼	119	120	.....	.....	.....	.....	118	119¾	118	118	119	119	120	120	119	119	119	119	118	118½
Gold, 1897.	6	116¾	118	117¾	118¼	119	120	118½	119	119	121	117	121	117⅛	118⅛	119	120⅛	118	120	119⅞	120	117¾	119¾	115¾	119¼
Cons. mort., 1911..	7	129	130	129½	131	132	132	130	132	.....	.....	130	131	130	130	130	130	130	130	130	130	132	132	129⅛	129⅛
Gen. mort., '24....4½		99	99	97⅞	101¼	101¼	102¼	102	103	.....	.....	102½	103	103⅛	103⅛	.....	.....	.....	.....	.....	.....	102	102	.....	.....
Penn. mort., 1910....	6	85	87	88½	90	90	92	90	91¾	.....	.....	90	90	87	88	.....	.....	88	90	91	92	90⅛	91	90	90½
Schuy. Nav. 1st, '97..	6	101	101¼	101½	101½	100	100	101½	101½	101	101	102½	102½	102	102¾	.....	.....	102⅝	102¾	102¾	104	100	102	90	90
2d, 1907	6	70	71	70	70¾	70⅞	73½	72	73½	68	70	67½	70	67½	69	.....	.....	67½	68	67¼	78	.....	.....	52	55¼
Mort. coup., '95....	6	.....	.....	35	41	43	45	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	40	40	34½	35	.....	.....
Boat loan	7	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3	30	.....	.....	.....	.....	.....	.....	40	40	34½	34½	.....	.....
Boat loan	6	20	20	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	20	20	.....	.....	.....	.....	25	28	25	25
Susquehanna, 1918..	6	10½	15	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

88 EXHIBIT B.

Statement of Highest and Lowest Sales of Bonds at the Philadelphia Stock Exchange in November, 1886.

Railroad.		November. Low.	November. High.
Allegh. Val., reg.	7 3/10	121	121
Income	7	22	22
B. & O., E. Side	5	113	114 1/2
Belv. Del. 1st	6		
3d, 1887	6	101 5/8	101 5/8
Bell's Gap 1st, 1905	6		
1st, 1893	7		
Consol.	6	109	109
Cam. & Am. M., cp., '89	6	105 1/8	105 1/2
Coupon, 1889	6	105 1/2	106 1/2
Catawissa new	7	129 3/4	129 3/4
Camden & Atl. 1st	7		
Camden & Burl. Co.	6		
Col. & Cinn. Mid.	6	103	103
Connecting 1st	6		
Clearfield & Jeff.	6	107 3/4	108
Delaware R. R. 1st	6		
Del. & Bound Bk. 1st	7	130	130
Easton & Amboy	5		
Elmira & W. 1st, 1910	6		
Perpetual	5		
Harrisburg 1st	4		
Hunt. & B. T. 1st, gld.	7		
2d, 1895	7		
3d, cons., 1895	5	99 3/4	101 1/2
Ithaca & Athens 1st	7		
Lehigh Val. 1st, coup.	6	124 1/2	126
1st, reg., 1898	5	123	126
2d, reg., 1910	7	141	142
Cons. M., reg., 1923	6	137	138
Cons. M., coup., 1923	6	138	138
N. O. Pacific 1st, 1920	6	80	82 3/8
89 N. Y. & Long Branch	5		
N. Y., Ph. & Norf. 1st	6	110	111 1/4
Income	6		
Norf. & W. new R. 1st	6	109	114
Debenture	6	89	90
Gen. mort.	6		
North. Central—			
Gen. M., 'A,' cp., 1926	5	110 1/2	111
Nor. Cent., ser. 'B'	5		
Gen. M., cp., 1904	6		
1900	6		

Consol., 1925	4½	107⅞	107⅞
No. Pac. gen. mort.	6		
2d	6	102½	102½
North. Pa. 1st, 1896	7	124	124
Gen. mort., cp., 1903	7		
Gen. mort., reg., 1903	7	134	134
Debentures	6	112	112
P., Tit. & Buf., cp., '96	7		
Pa. & N. Y. C. & R., '96	7	118	118
Reg. & cp., 1906	7	128¼	128½
Penn. gen., cp., 1910	6	130	131½
Gen., rg., 1910	6	133	133
Cons., reg., 1905	6		
Cons., coup., 1905	6	128	129⅛
Cons., reg., 1919	5		
Cons., coup., 1919	5	113¼	113¼
Penna. Co. reg., 1907	6	110	110
Reg., 1920	4½		
Coupon, 1920	4½		
Perkiomen 1st, 1887	6	99½	100
Phila. & Erie 2d, '88	7	106½	107
Gen. mort., 1920	5	111¼	113
Phila. & Read. 1st ser.	5	70	74½
Con., 2d ser.	5	46	52½
1st, 1910	6		
2d, coup., 1893	7	115	115½
Phila. & Reading—			
Improvement	6	104½	105¼
Cons., coup., 1911	7	120	127⅞
Cons., reg., 1911	7	120	127½
Cons., gold, 1911	6	115	115
Gen. M., gold, 1908	6	102	106
Gen. M., 1908	7	101¼	103½
90 Income, coup., '96	7	60½	67⅝
Debenture	6	43	51
Scrip	6	34	36
Deferred inc.		9½	14½
Con. adj. scp., 1888	6	60	66
New conv., 1893	7	45	62½
New conv., ex-coup.	7	41	58¼
P. & R. C. & I., var.	7	72	96
Debenture	7	45	50
Phil., Wil. & B., tr. ctfs.	4	101	102¾
Pitts., C. & St. L., coup.	7	122	122
Reg., 1900	7	121½	122
Sham. Val. & Pott., cp.	7	126	126
Shenandoah Val. 1st	7	84	97
Gen. mort.	6	40	48½
Steub. & Ind. 1st, cp.	5	113	113
Sunb. & Lewist. 1st	7		

Sun., Haz. & W., 1928	5	102	103
2d, 1938	6	99½	99⅜
Texas & Pacific—			
1st, gold, 1905	6	107½	108
1st, R. G. div., 1930	6	71⅛	71½
Cons., gold, 1905	6	97½	100
Un. & Titusv. 1st, '90	7		
United N. J., cons.	6		
Gen. mort.	4		
War. & Fr. 1st, '96	7	105	105
W. Chester, cons., '91	7		
W. Jersey 1st, 1896	6	116¼	116¼
1st, 1899	7		
W. J. & Atl. 1st, 1910	6	107	107½
W. Penna. 1st, '93	6		
Pittsb. Br., cp., '96	6	111	111
West Shore, guar.	4	105	105¾
Canal.			
Chesa. & Del. 1st, '86	6		
Leh. Nav., extend.	4½	110	110½
Conv., gold, 1894	6	111½	111½
R. R. loan, 1897	6	119	119
Gold, 1897	6	117¾	119¾
Cons. mort., 1911	7	132	132
Gen. mort., 1924	4½	102	102
Penna, mort., 1910	6	90½	91
91 Schuyl. Nav. 1st, '97	6	100	102
2d, 1907	6		
Mort., coup., 1895	6	34½	35
Boat loan	7	34½	34½
Boat loan	6		
Susquehanna, 1918	6	25	28

92 EXHIBIT C.

Statement of Highest and Lowest Sales of Bonds at the New York Stock Exchange in November, 1886.

		November. Low.	High.
Atlantic & Pac. 1st	6	86½	90
West. div., income	6	27¾	31
Balt. & O., 1st P. Br.	6	125	125
Gold, 1925, coup.	5	110½	111½
Registered	5		
Bost., H. T. & Wes. deb.	5	93	93½
Bur., C. R. & No. 1st	5	108¼	109
Cons. 1st & col. tr.	5	99½	104¼
Iowa City & W. 1st	7		
Ced. R., I., F. & N. 1st	6		
1st, 1921	5	103	103

B., N. Y. & P. 1st, 1921	6		
Central Iowa 1st	7	*90	104
Eastern div. 1st	6	70	70
Ills. div. 1st, 1912	6		
Cent. of N. J. 1st, 1890	7	107	108⅛
Consol., assented	7	107	109
Conv., assented	7	107½	109
Adjustment	7	105	107½
Conv. debenture	6	79	83¾
Leh. & W. B., assent	7	110	112
Income	7		
Am. Dock & Imp.	5	99	99⅞
Ches. & O., Pur. M. fd.	6		
Series A	6		
Series B	6	*76	78¼
Currency	6	32	34¾
Mort., 1911	6	97½	99¼
Ches., O. & S. W.	⅚	100	102
Chic. & Alton 1st	7	118	118½
Sinking fund	6	125	125
L. & Mo. R. 1st, 1900	7	120	120
2d, 1900	7		
93 Chic. & Alton—			
St. L., J. & Chic. 1st	7	116½	117
Miss. Riv. Bd. 1st, S. F.	6		
Chic., Bur. & Nor. 1st	5	103	104½
Chic., B. & Q. consol.	7	134¼	135
Debenture	5	105¼	107½
Iowa div., sink. fd.	5		
Iowa div.	4	99¼	99¾
Denver div., 1922	4	99	99½
Plain, 1921	4	92½	92½
Chic. & E. Ills. 1st, S. F.	6		
1st consol., gold	6	114	115
Chic. & In. C'l R'y 1st	5	94¾	99½
Chic., Milw. & St. P.—			
1st P. D., 1898	8	132½	134
2d, 1898	7 3/10	126	126
1st, gold	7		
1st, La Crosse div.	7	120⅜	121
1st, I. & M. div.	7	123½	124
1st, I. & D. div.	7		
1st, C. & M. div.	7		
Consol., 1905	7	132	132
1st, I. & D. exten.	7	130	133
1st, So. W. div.	6	118½	118½
1st, La C. & Dav.	5	108	109¾

*Coupon off.

1st, So. Minn. div.	6	116	117½
1st, H. & D. div.	7	126	127½
Chic. & Pac. div.	6		
Chic. & Pac. W. div.	5	107½	108½
Chic., Mil. & St. Paul—			
Mineral Point	5	106⅝	108
Wis. & Min. div.	5	107¼	107½
Terminal	5	104¼	107
Fargo & So. assu.	6		
Chic. & Northwest—			
Consol, 1915	7	138¾	140¼
Gold, coup.	7	133½	135
Gold, reg.	7	134	134
Sinking fund, coup.	6	115	116
Registered	6		
Sinking fund, coup.	5	108	108½
Registered	5		
Debenture	5	107½	108
Registered	5		
94 25 yrs. deben., 1909	5	106½	107¾
Exten. bonds, 1926	4	101¾	101¾
Escan. & L. Sup. 1st	6		
Iowa Midland 1st	8		
Chic. & Mil. 1st	7		
Winona & St. P. 1st	7	102⅞	102⅞
2d	7		
Mil. & Mad. 1st	6		
Ottum., C. F. & St. P.	5	109	109
Northern Ills. 1st	5		
Chic., R. I. & Pac., cp.	6	138	139⅞
Registered	5	135	137
Exten. & Col.	5	111	111¾
Keok'k & Des M. 1st	5	109	109
Chic. & St. L. 1st	6	101	101
Chic., St. L. & P.	5		
Chic., St. P., Min. & Om.—			
Consol., 1930	6	124	125½
Chic., St. P. & M. 1st	6	126	126
St. P. & S. City 1st	6	125¾	126½
Northern Wis. 1st	6		
Chic. & W. I. 1st, S. F.	6		
Gen. mort.	6	109	109
Cin., H. & D., con. S. F.	7		
Cin., W. & B. 1st gu.	4½		
Cin. & S., gu. C., C., C. & I.	7		
Guar. Lake Shore	7		
Cl., C., C. & I. 1st, S. F. D.	7	123	124
Consol.	7	133½	133½
Consol., S. F.	7	124	124

General cons.	6	108	109¾
Col. Coal & I. 1st, con.	6	98	101½
Col., H. Val. & T. 1st	5	86	89¾
Gen. gold, 1904	6	94½	97¼
Del. & Hud. C. 1st, '91	7	112¼	113⅜
1st exten., '91	7	112¾	112¾
Coupon, 1894	7	115½	116½
Reg., 1894	7		
Penna. div., coup.	7		
Registered	7		
Alb. & Susq., 1st M.	7		
1st con. guar.	7	133	133
1st con. guar.	6	119½	120½
95 ' Del. & H. C.—Alb. & S.—			
1st con. guar. reg.	6	118½	119½
Rens. & Sar. 1st	7		
Del., Lack. & West.—			
Convertible	7	116	116
Mort., 1907	7	136⅜	137
Syr., B'n & N. Y. 1st	7		
Morris & Essex 1st	7	141½	142½
2d mort.	7	112¼	113½
7's, 1871	7	125	126½
Consol. guar.	7	137	138
N. Y., L. & W. 1st	6	130	130
Construction	5	108	108⅞
Denver & Rio G. 1st	7	118	120
Consolidated	7		
Trust Co. receipts		112⅛	115
New consol	4	79¾	81⅝
Denv. & R. G. W. 1st	6	77	82
Assented, 1st	6	73¾	78½
Denv., So. P. & P. 1st	7	81½	84½
Des M. & Ft. D. 1st	6		
Det., M. & Marq. 1st	6	95	100
Land grants, 1911	3½	46½	50
Income, 1921	7	43½	43½
Det., B. C. & Alp. 1st	6		
E. Tenn., V. & G. 1st	7		
Consol	5		
Trust receipts	5		
Consol., ex-coup.	9 to 12		
E. Tenn., Va. & Ga.—			
Cons., ex-cp., Tr. rec.			
Divisional	5		
Income	6		
Eng. trust receipts			
E. T., V. & Ga. R'y, con.	5	95	97¾
East & W. Ala. 1st	6		

Eliz., Lex. & Big. S.	6	$108\frac{3}{4}$	109
Erie 1st, extended	7	122	122
2d, ext.	5	114	114
3d, ext.	$4\frac{1}{2}$	$109\frac{1}{2}$	$109\frac{1}{2}$
4th, ext.	5	113	115
5th, 1888	7	106	106
1st, consol., gold	7	$133\frac{3}{4}$	134
1st, consol. fd. coup.	7		
96 Reorgan'on 1st lien	6		
Long Dock	7	116	$117\frac{3}{8}$
Cons. gold	6	117	$117\frac{1}{4}$
Buff., N. Y. & E. 1st	7	140	140
N. Y., L. E. & W.—			
New, 2d consol.	6		
Ex. June, '86, cp.	6	$101\frac{1}{2}$	$104\frac{1}{4}$
Col. trust, 1922	6		
Fund. coup., 1969	5	94	$95\frac{1}{2}$
Income	6	75	76
Ev. & Ind'p con., 1926	6		
Ev. & T. Haute con.	6	117	$118\frac{1}{4}$
Mt. Vernon 1st	6	$112\frac{1}{4}$	$112\frac{1}{4}$
Flint & P. M. mort.	6	119	$119\frac{1}{2}$
Ft. W. & Denv. C. 1st	6	90	$95\frac{1}{2}$
Gal., H. & H. of '82	5		
Gal., H. & San A. 1st	6		
2d mort.	7		
Western div. 1st	5	$100\frac{3}{8}$	101
2d	6	$93\frac{1}{8}$	94
Gr., B. W. & St. P. 1st	6		
2d income	8	$36\frac{3}{4}$	39
Gulf., Col. & S. F. 1st	7	124	125
2d, 1923	6	$102\frac{1}{2}$	$103\frac{7}{8}$
Han. & St. Jo. cons.	6	$121\frac{1}{2}$	$122\frac{1}{2}$
Hen. Bridge Co. 1st	6	$108\frac{1}{2}$	$109\frac{1}{2}$
Hous., E. & W. T. 1st	7		
Hous. & T. C. 1st M. L.	7	*$110\frac{1}{8}$	$111\frac{1}{4}$
1st, Western div.	7	*$101\frac{3}{8}$	105
W. & N. div.	7	*104	104
2d, main line	8	$87\frac{1}{2}$	90
General mort.	6	63	68
Ill. Cent., g'ld, 1951	$3\frac{1}{2}$	$99\frac{3}{4}$	$99\frac{3}{4}$
1st, gold, 1951	4	109	110
Springf. div., 1898	6	$117\frac{1}{2}$	$117\frac{1}{2}$
Middle div., 1921	5		
C., St. L. & N. O. 1st, C.	7		
Gold	5	116	$117\frac{3}{4}$
Dub., S. C., 2d div.	7		
Cedar F. & M. 1st	7	106	111

* Coupon off.

	Ind., Bl. & W. 1st, pref.	7	116⅛	118
	1st, 1909	5, 6	93½	97
	2d, 1909	5, 6	79⅞	86½
97	Eastern div.	6	91½	95½
	Con. income	6	29	31¾
	Ind., Dec. & Sp'gfield—			
	1st, ex-funded coup.	7	106	106
	2d, income			
	2d, income trust rcpts.		37	38¾
	Intern. & Gt. No. 1st	6	114½	116½
	Coupon, 1909	6	92½	95
	Iron St'mb't Co., 1901	6		
	Jefferson 1st	7	104	104
	Kentucky C., stam'd	4	67	69½
	Knox. & O. 1st, 1925	6	101½	103¼
	Lake Erie & W. 1st	6	102¼	103
	Income	7	35	40
	Sandusky div.	6		
	Sandusky div., inc.			
	Laf., Bl. & M. 1st	6	103	108
	Income	7	50	50
	Lake Shore & M. So.—			
	Cl., Pains. & Ash.	7	114	114⅛
	Buff. & Erie, new	7	124	124
	Kal. & W. P. 1st	7		
	L. Shore, dividend	7		
	1st con., coup.	7	130	130½
	1st con., reg.	7	127	128½
	2d con., coup.	7	125½	127
	L. Sh. & Mch. So.—			
	2d con., reg.	7		
	Mahoning Coal R. R.	5	104	105
	Long Island 1st	7		
	1st consol.	5	112	114¼
	Louisv. & N., consol.	7	118½	118½
	Cecilian branch	7	111	112
	N. O. & Mob. 1st	6	105¼	107½
	2d	6	94	96
	E., H. & Nash. 1st	6		
	Gen'l mort.	6	109	109⅝
	Pensacola div.	6	98	102
	St. Louis div. 1st	6	113	113
	St. Louis div. 2d	3		
	Nash. & Decatur	7		
	So. & No. Ala. S. F.	6		
	Trust bonds	6	105	107
	Ten-forty, 1924	6	97¾	100
98	Pensac. & Atl. 1st	6	93	96
	Lou., N. Alb. & C. 1st	6	110½	111½

Con., gold, 1916	6	95	100
Louisv., N. O. & T. 1st	5		
Man. B. Imp. Co., lim.	7		
Mem. & Chas., gold	6	104¼	106¼
Metropolitan El. 1st	6	117½	119½
2d, 1899	6	109¾	111
Mex. Cent. 1st, ex-cp.	7		
New assented	4	47	52
Mich. Cent. 1st, consol	7	126⅝	129
1st, consol	5		
Coupon, 1931	5		
Registered, 1931	5		
Mid. of N. J. 1st	6	106	108¾
Mil., L. Sh. & W. 1st	6	114¼	116½
Income	6	101½	104
Michigan div.	6	113	115
Ashland div. 1st	6		
Mil. & No. 1st, 1910	6	106	106½
1st, on exten., 1913	6	104	104
Minneap. & St. L. 1st	7	132	135
Iowa extension	7	122	122
2d, 1891	7		
Pacific ext.	6	109	109
Imp. & equip., 1922	6	90	95
Minn. & No. W. 1st, G.	5	104½	105
Mo., K. & T., gen. con.	6	101¼	105⅛
Gen. consol.	5	90⅝	93
Consol.	7	109½	110¾
2d income	6		
Han. & C. Mo. 1st	7		
Mobile and Ohio new	6	114	115
1st, exten., 1927	6	105½	105½
1st pref. debenture	7	63½	74¾
2d pref. debenture	7	37	44½
3d pref. debenture	7	30	35
4th pref. debenture	7	25	30
Mobile & Ohio—			
St. Louis & C., guar.	4	76	76¼
Morgan's L. & T. 1st	6		
1st, 1918	7		
Mutual Union T., S. F.	6	84¼	85½
Nashv., C. & St. L. 1st	7	130⅛	131
99 2d, 1901	6	110	111½
New J. South, guar.	6		
N. O. Pacific 1st, ex-cp.	6	80	81
Trust receipts	6	79¾	85
N. Y. Central ext.	5	104	107
1887	6	103½	104
N. Y., C. & H. 1st, cp.	7	136½	138
1st, reg.	7		

	Debenture	5	108⅞	109¼
	Registered	5	108¼	108¾
	Can. So. 1st, guar.	5	106¾	107¼
	2d mort.	5	93¾	95
	Harlem 1st, coup.	7	132	132
	1st, reg.	7	131½	132
	N. Y., Chic. & St. L. 1st	6	96	97
	1st trust receipts*f*	6	96	98½
	2d, 1923	6		
	N. Y. city & No., gen'l	6	71	71½
	Trust Co. receipts	6	70	73½
	N. Y. elevated 1st	7	123	126
	N. Y. & N. Eng. 1st	7		
	1st, 1905	6		
	N. Y., N. H. & H. 1st, rg.	4		
	N. Y., On. & W. 1st, G.	6	105¾	107¼
	N. Y., Susq. & W. 1st	6	*83	88½
	Debenture, 1897	6	*62	64
	N. Y. & Tex. land scrip			
	N. Y. Wood & R. 2d, inc.			
	Norf. & West. gen. M.	6	112	112
	New River 1st	6	113	114½
	Imp. & ext., 1934	6	98	98
	Adj. mort., 1924	7		
	Og. & L. C. 1st, con.	6		
	Ohio & Miss. Con. S. F.	7	122	123
	Consol.	7	120	122
	2nd consol.	7	117½	120
	1st, Springf. div.	7	110	110¼
	General, 1932	5	91½	94
	Ohio Southern 1st	6	105	108
	2d income	6	44	49½
	Or. R'y & Nav. 1st	6	110	111½
	Debentures, 1887	7		
	Consol., 1925	5	106½	107¼
100	Oreg. Imp. Co. 1st	6	95	98½
	Oregon Trans. 1st	6	100¾	102
	Pacific railroads—			
	Cent. Pac., gold	6	115¾	116½
	San Joaquin Br.	6	112	112
	Cal. & Oregon	6	103	103
	Land grants	6	102¾	103¼
	Western Pac.	6	114	114
	North. Cal., guar.	6		
	No. Pac. gen. 1st, L. G.	6	116¼	117½
	Gen. 1st, L. G., reg.	6		
	Gen. L. G., 2d, 1933	6	102⅜	103¼
	No. Pac. Ter. Co 1st	6	104	108

* Coupon off.

	James Riv. Val. 1st	6		
	So. Pac. Cal. 1st	6	$110\frac{3}{4}$	$110\frac{3}{4}$
	So. Pac. Arizona 1st	6		
	So. Pac. N. Mex. 1st	6	108	$108\frac{5}{8}$
	Union Pac. 1st	6	116	$116\frac{3}{4}$
	Land grants	7	$101\frac{1}{2}$	$101\frac{1}{2}$
	Sinking fund	8	$117\frac{1}{2}$	$118\frac{1}{4}$
	Registered	8	$117\frac{3}{4}$	$117\frac{3}{4}$
	Collat. trust	6	$108\frac{1}{2}$	$108\frac{1}{2}$
	K. Pac. 1st, 1895	6	112	$112\frac{1}{2}$
	1st, 1896	6	$113\frac{1}{2}$	114
	Denv. Div. ass'd	6	$114\frac{1}{2}$	115
	1st consol.	6	106	$107\frac{1}{2}$
	At., Col. & Pac. 1st	6	106	106
	At., J. C. & W. 1st	6		
	Oreg. Sh. line		$106\frac{1}{8}$	107
	Utah South. gen.	7		
	Ext'n, 1st, 1909	7	83	85
	Mo. Pac. 1st, cons.	6	$112\frac{7}{8}$	$115\frac{1}{2}$
	3d, 1906	7	118	$122\frac{1}{2}$
	Pac. of Mo. 1st	6	$103\frac{3}{4}$	$104\frac{7}{8}$
	2d, 1891	7	$110\frac{1}{2}$	111
	St. L. & S. F. 2d, cl. A.	6	114	114
	Class "C"	6	$112\frac{3}{4}$	$114\frac{1}{2}$
	Class "B"	6	113	$114\frac{1}{2}$
	P., C. & O. 1st	6		
	General mort.	6	$109\frac{1}{2}$	114
	So. Pac. of Mo. 1st	6	$103\frac{3}{8}$	$104\frac{1}{4}$
	Ft. Sm. & V. Bd. 1st	6		
	Kan. C. & So. W. 1st	6	$107\frac{1}{8}$	$107\frac{1}{4}$
	Texas & Pac. 1st	6		
101	Consols.	6	*98	$99\frac{1}{2}$
	Trust receipts			
	Inc. & Land gr., reg.	7	$56\frac{1}{4}$	$60\frac{3}{4}$
	Trust receipts		$54\frac{3}{4}$	$63\frac{7}{8}$
	1st, Rio Gr. D.	6	74	74
	Ex. coup.	6	$69\frac{5}{8}$	$75\frac{1}{2}$
	Trust receipts		$70\frac{3}{4}$	78
	Gen. M. & Ter.	6		
	Trust receipts		65	71
	Pa. R. R., Pa. Co., cp.	$4\frac{1}{2}$	$106\frac{1}{2}$	$107\frac{3}{4}$
	Registered	$4\frac{1}{2}$		
	Pitts., C. & St. L. 1st	7		
	Pitts., Ft. W. & C. 1st	7		
	2d, 1912	7	$140\frac{1}{2}$	141
	3d, 1912	7		
	Clev. & P., cons. s. fd.	7		
	4th, 1892	6		
	St. L., V. & T. H. 1st	7		

* Coupon off.

Peo., Dec. & Ev. 1st	6	114¾	114¾
Income	6	79	82½
Evansv. div.	6	110	110
Evansv. div., inc.	6	79	82½
Peoria & Pek. Un. 1st	6	110	110
Pittsb., Cl. & Tol. 1st	6	108⅛	109
Pitts., Brad. & Buf. 1st	6		
Rich. & All., Tr. rec.	7	74	80
Rich. & Danv., cons.	6	114	115½
Debenture	6	110	114
Assented		107⅝	113¼
Roch. & Pittsb. 1st	6		
Consol. 1st	6	108	109½
Rome, W. & Og. 1st	7		
Con. 1st ex.	5	99½	103
Income	7	98	100
St. Jos. & G'd Isl. 1st	6	107	107½
2d income	5	71½	74½
St. L., Alt. & T. H. 1st	7		
2d pref.	7	111	111
2d income	7		
Dividend bonds	6	39½	42
Bell. & So. Ill. 1st	8		
Bell. & Caron. 1st	6		
St. L. & Iron Mt. 1st	7	113	113⅜
102 2d, 1897	7	112⅛	114
Ark. branch	7	115½	116½
Cairo & Fulton 1st	7	109	109
Cairo, Ark. & Texas	7	113½	114
Gen. consol. & L. G.	5	96½	99⅝
St. P., Minn. & M. 1st	7		
2d	6	120	120
Dakota extension	6	119	119
1st consol., coup.	6	121	123½
1st consol., reg.	6		
Scioto Valley 1st con.	7	68	68
Shenandoah Val. 1st	7	82½	98
Gen. mort.	6	39½	49½
Sodus, B. & So. 1st	5		
South Carolina 1st	6	106	107½
2d, 1931	6	84	88
Incomes	6	27½	33
Tenn. Coal & I., 1901	6		
So. Pitts., 1902	6		
Tex. C. 1st, S. F., 1909	7	75	75
T. & N. O., Sab. div., 1st	6	103	103½
Tol., A. A. & N. M. 1st	6	93½	95
Tol., A. A. & G. T. 1st	6	102	106
Tol., & Ohio Cent. 1st	5	99	101
Tol., P. & W. 1st, tr. ct.	7	104	105½
Virginia Midland inc.	6	93	100

Valley R'y of O., con.	6	105	105½
Wab., St. Louis & Pac.—			
General mort.	6		
Trust receipts		60½	64½
Chicago div.	5	89½	95½
Havana division	6		
Detroit division	6	84	90
Cairo division	5		
Wabash mort., 1909	7	82	85
Tol. & W. 1st, ext'd	7	111½	115
St. Louis div.	7	107	108½
2d extended	7	100½	103½
Equipment	7		
Cons. conv.	7	91	98
Gt. Western 1st	7	111⅛	113¼
2d mort., 1893	7	100	103¼
Quincy & Tol. 1st	7	94	94
St. L., K. C. & N., Rl. E.	7	110	111
103 Omaha div.	7	98¾	101
Trust receipts		98¼	103
Clarinda branch	6	70	72
St. Charles bridge	6	102½	103⅝
North Mo. 1st	7	116¾	119½
West Shore, guar.	4	101½	106
Registered	4	101½	105⅞
West. Un. tel. coup.	7	123	123
Registered	7		

104 EXHIBIT D.

Statement of Highest and Lowest Sales of Bonds at the Philadelphia Stock Exchange in November, 1877.

Railroad bonds.	Principal.	Interest.	Nov.
Allegheny Valley 7 3/10's, reg. coupon	1896	J. & J.	107 106¾
Do. do. 7's, East. ext. coupon	1910	A. & O.	82½
Do. do. 7's, income, coupon	1894	"	42 40
Belvidere, Delaware, 1st mort. 6's, coupon	1902	J. & D.	105
Do. do. 2d mort. 6's, coupon	1885	M. & S.	101 100
Do. do. 3d mort. 6's, coupon	1887	F. & A.	93
Camden and Amboy 6's, coupon	1883	"	104½ 103¾
Do. do. 6's, coupon	1889	J. & D.	104¾
Do. do. mort. 6's, reg. coup.	1889	M. & N.	107½ 107
Camden and Atlantic 1st mort. 7's, gold, C.	1903	J. & J.	
Do. do. 2d mort. 7's, cur., C.	1880	A. & O.	

Camden and Burlington Co. 6's, reg. coup.	1897	F. & A.	101½
Catawissa 1st mort. 7's, conv. coupon	1882	"	
Do. chat. mort. 10's, coupon	1888	M. & N.	
Do. new 7's, register coupon	1900	F. & A.	104
			103
Connecting 1st mort. 6's, coupon	1900–1904	M. & S.	102
			100½
Delaware and Bound Brook 1st mort. 7's, C.	1905	F. & A.	98
			96
Denver & Rio Grande 1st mort. 7's, coupon	1900	M. & N.	
East Pennsylvania 1st mort. 7's, coupon	1888	M. & S.	
Elmira and Williamsport 1st mort. 7's, R. C.	1880	J. & J.	104
			103½
Do. do. 5's, coupon	perpetual	A. & O.	
Harrisburg 1st mort. 6's, coupon	1883	J. & J.	
Hunt. & Broad Top 2d mort. 7's, gold C.	1895	F. & A.	
Do. do. 3d mort. cons. 7's, C.	1895	A. & O.	
Indianapolis and Vincennes 1st mort. 7's	1908	F. & A.	
Ithaca and Athens 1st mort. 7's, gold coupon	1890	J. & J.	102
Junction 1st mort. 6's, coupon	1882	"	
105 Do. 2d mort. 6's, coupon	1900	A. & O.	
Lehigh Valley 1st mort. 6's, coupon	1898	J. & D.	110
			109
Do. 1st mort. 6's, registered	1898	"	110½
			110⅛
Do. 2d mort. 7's, registered	1910	M. & S.	113¾
			113
Do. cons. mort. 6's, R. & C.	1923	J. & D.	98¼
			95½
Northern Central 2d mort. 6's, coupon	1885	J. & J.	
Do. do. 3d mort. 6's, coupon	1900	A. & O.	
Do. do. cons. mort. 6's, gold C	1900	J. & J.	
Do. do. 6's, currency, reg.	1904	A. & O.	
Do. do. income 5's, coupon	1926	J. & J.	
Northern Pacific 1st mort. 7 3/10's, coupon	1900	"	
Do. do. scrip			
North Pennsylvania 1st mort. 6's, coupon	1885	J. & J.	108½
			107
Do. do. 2d mort. 7's, coupon	1896	M. & N.	111
			109½
Do. do. chat. mort. 10's, coupon	1877	A. & O.	
Do. do. gen. mort. 7's, coupon	1903	J. & J.	107
			106
Do. do. gen. mort. 7's, reg.	1903	"	107
			106¼
Do. do. scrip			
Oil Creek 1st mort. 7's, coupon	1882	A. & O.	89
Pittsburgh, Titusville and Buffalo 7's, coupon	1896	F. & A.	58
			53
Do. do. do. scrip			

Pemberton & Hightstown 1st mort. 7's, C.			1889	J. & J.	
Penna. & New York 1st mort. 7's, R. & C.,			1896–1906	J. & D.	
Pennsylvania 1st mort. 6's, coupon			1880	J. & J.	107½ 106½
Do.	gen. mort. 6's, coupon		1910	"	107 106½
Do.	gen. mort. 6's, registered		1910	A. & O.	106¾ 106⅛
Do.	cons. mort. 6's, coupon		1905	J. & D.	94
Do.	cons. mort. 6's, registered		1905	Mar. Quar.	93
Do.	Navy-Yard 6's, registered		1881	J. & J.	
Perkiomen 1st mort. 6's, coupon			1897	A. & O.	
106 Philadelphia and Erie 1st mort. 6's, coupon			1881	A. & O.	102 101½
Philadelphia and Erie 2d mort. 7's, coupon			1888	J. & J.	98½ 97½
Phila. and Reading 1st mort. 6's, R. C.			1880	"	105
Do.	do.	2d mort. 7's, coupon	1893	A. & O.	112
Do.	do.	debenture 6's, C.	1893	J. & J.	
Do.	do.	income 7's, coupon	1896	J. & D.	65 64¾
Do.	do.	scrip 6's, coupon	1882	J. & J.	64¾ 60
Do.	do.	gen. mort. 7's, coupon	1911	J. & D.	103 101½
Do.	do.	gen. mort. 7's, registered	1911	"	102½ 99
Do.	do.	cons. mort. 6's, gold R. C.	1911	"	
Do.	do.	new conv. 7's, R. C.	1893	J. & J.	57 56
Do.	do.	do. do. ex coupons			
Phila. and Reading coal and iron deb. 7's, R. C.			1892	M. & S.	
Do.	do.	do do. mort. 7's, R. C.			
Phila. and Reading Tamaqua tract			1892	J. & J.	
Do.	do.	Brady tract	1892	"	
Do.	do.	Glenworth tract	1892	M. & S.	63
Do.	do.	Helfenstein tract	1892	M. & N.	63 62½
Do.	do.	W. Flowery Field tract	1892	"	
Do.	do.	Big Schall tract	1892	"	63
Do.	do.	Walker tract	1892	J. & D.	63
Pickering Valley 1st mort. 7's, coupon			1900	A. & O.	
Pittsburgh, Cinn. and St. Louis 7's, coupon			1900	F. & A	73¾ 73
Reading and Columbia 1st mort. 7's, coupon			1882	M. & S.	
Shamokin Valley and Pottsville 7's, coupon			1901	J. & J.	95
Steubenville and Indiana 1st mort. 6's, C.			1884	various.	89 85

Do. do. mort. 7's, coupon	1890	J. & J.	85¼	
Stony Creek 1st mort. 7's, coupons	1907	A. & O.		
Sunbury and Erie 1st mort. 7's, R. and C.	1897	A. & O.	110	
				109¼
Union and Titusville 1st mort. 7's, coupon	1890	J. & J.		
United New Jersey cons. mort. 6's, reg.	1894	A. & O.		
Warren and Franklin 1st mort. 7's, coupon	1896	F. & A.	80	
West Chester cons. mort. 7's, reg. coupon	1891	A. & O.	110	
107 West Jersey debenture 6's, coupon	1883	M. & S.	80	
Do. 1st mort. 6's, coupon	1896	J. & J.		
Do. 1st mort. 7's, reg. coupon	1899	A. & O.	100	
Western Pennsylvania mort. 6's, coupon	1893	"		
Do. do. (Pittsburgh Branch) 6's, C.	1896	J. & J.	78	

Canal Bonds.

Chesapeake and Delaware 1st mort. 6's, R.	1886	J. & J.		
Delaware and Raritan 6's, coupon & reg. various		various.		
Delaware Division 1st mort. 6's, coupon	1878	J. & J.		
Lehigh Navigation mort. 6's, registered	1884	Jan. quar.	104	
				102½
Do. R. R. loan, registered	1897	Feb. quar.	103	
				100
Do. conv. gold 6's, reg.	1894	M. & S.		
Do. gold 6's, reg. coupon	1897	J. & D.	89¾	
				87
Do. cons. mort. 7's, reg.	1911	"		
Pennsylvania mort. 6's, coupon	1910	J. & J.	62½	
Schuylkill Navigation 1st mort. 6's, registered	1897	Mar. quar.	92	
				91
Do. 2d mort. 6's, registered	1907	J. & J.	66½	
Do. mort. 6's, coupon	1895	"		
Do. 6's, boat and car, R.	1913	M. & N.		
Do. 7's, boat and car, R.	1915	"		

City Passenger Railroads.

Hestonville, M. and Fairmount 1st mort. 6's, cou.	1895	M. & N.		
Philadelphia city 1st mort. 6's, coupon	1881	J. & J.		
Ridge avenue 1st mort. 6's, coupons	1880	J. & J.		
West Philadelphia 1st mort. 7's, coupon	1878	J. & D.	102	

Miscellaneous Bonds.

American Steamship Company 6's, coupon	1896	A. & O.	75	
				74½
District of Columbia 3-65's, coupon	1924	F. & A.		
East Pennsylvania Iron Co. 1st mort., 7's				
Emaus Iron Co. bonds				
Empire Transportation Co. 8's, coupon	1883	Feb. quar.		
Masonic Temple 6's, redemption loan		M. & S.		
Minnequa Springs Imp. mort. 7's, coupon	1897	"		

Pennsylvania Car Trust, series C and D			86½
Saltsburg Coal Co. 1st mort. 6's, coupon	1895	J. & J.	
Susquehanna Coal Company 6's, reg. coup.	1911	J. & J.	70
Union League 1st mort. 6's, reg.	1881	J. & J.	
Zoological 6's. reg.		Sept.	

108 EXHIBIT E.

Statement of Highest and Lowest Sales of Bonds at the New York Stock Exchange in November, 1877.

Bonds.	November. Low.	High.
Alb. & Susq. 1st mort.	110	110
2d mort.	95½	95½
Alb. & Susq. 3d mort.		
1st consol., guar.		
Bost., Hartf. & E. 1st, M.	10	11
Guaranteed	11	12
Bost. & N. Y. Air L. 1st		
Buff., N. Y. & E. 1st, '77	102½	103¼
Large bonds	102½	103¼
New bonds, 1916	107⅞	108⅛
Bur., C. R. & M. 1st, 7's, G.		
Bur., C. R. & N. 1st, 5's	58½	62
Can. So. 1st, S. F., coup.	58	61¾
With int. certificates	59½	59½
Ced. Falls & Minn. 1st	85	86
Cent. of N. J. 1st M., new	111	112
1st mort., consol.	66⅛	68½
Convertible	61½	64
Leh. & W. B., cou. gu.	27	33
Am. Dock & imp. b'ds	36	41
Cent. Pacific gold	106½	108⅛
San Joaquin branch	84¾	86¼
Cal. & Or. 1st mort.	86	87½
State aid	106½	107½
Land grant		
West Pacific bonds	101¼	102¼
Ches. & O. 1st M. 6's	25	29
1st mort. 6's, ex coup.	20	20
109 Chic. & Alton 1st mort.	112	114
Income	102	103
Joliet & Chic. 1st M.	110	111
La. & Mo. 1st M., guar.	80	84
St. L., J. & Chic. 1st M.	104	104⅛
Chic., B. & Q. 1st M., 8's	113	115
Consol. mort., 7's	111	112
5's, sinking fund	89	90
C., M. & St. P. 1st 8's, P. D.	114	116¼
2nd mort. 7 3/10's, P. D.	97½	101½

	1st, 7's, $ gold, R. div.	97	98½
	1st mort., La. Cr. div.	103½	105½
	1st mort., I. & M. div.	94	97¼
	1st mort., I & D. div.	91	93
	1st mort., H. & D.	91	94
	1st mort., C. & M.	100⅛	103¼
	Consol. sinking fund	91½	93¼
	2d mort.	90	91¼
	Chic. & N'west sink. fd.	108	109½
	Interest	103	108
	Consolidated	106	106¾
	Extension	103	104
	1st mort.	107½	108¼
	Gold, coupon	93⅛	96
	Gold, reg.	92¼	96
	Iowa Mid. 1st, 8's	80	92½
	Gal. & Chic. extend.	107	108½
	Peninsula 1st conv.	105	105
	Chic. & Mil. 1st mort.	107	108½
	Winona & St. P. 1st	85¾	88½
	2d mort.	73	73
	Chic., Rock I. & P. 1st, 7's	107⅜	108
	Sink. fd., income 6's, '95	105½	106½
	6's, 1917, coup.	107	108⅛
	6's, 1917, reg.	107	108
	C. & S. 1st, L. S. & M. S.	71	71
	C., C., C. & I. 1st, 7's, skg. fd.	106	108½
	Consolidated mort.		
110	Cleve. & P. con. skg. fd.	108	110
	4th mort., sinking fd.	106	107
	C., C. & I. C. 1st mort.	32	36
	2d mort.		
	Col., Springf. & C. 1st	25	25
	Del. & H. canal 1st, '77		
	1st mort., 1884	98	99¼
	1st mort., 1891	99½	101
	Coup. 7's, 1894	95	96½
	Reg. 7's, 1894	96½	96½
	Del., Lack. & W. 2d M.	104	105½
	7's, convertible	100	102
	D. & Sioux C. 1st mort.	102	102
	2d div.	102	105
	Erie 1st mort., exten.	109	110
	2d mort., 7's, 1879	103	104¾
	3d mort., 7's, 1883	104¾	105⅛
	4th mort., 7's, 1880	101¼	102¼
	5th mort., 7's, 1888	104	105
	Long Dock	108	109¾
	E. Tenn., Va. & Ga. 1st, 7's	92	93½
	Galv., H. & H. 7's, G., '71		
	Han. & St. Jo. 8's, conv.	82½	87½

Houst. & Gt. N. 1st, 7's		
With certificate	69	69
Ind., Bl. & W. 1st mort.	15	15
2d mort.	2	2
International 1st, 7's		
With certificate		
Kan. Pac. 1st, 6's, F. & A.	88	88
1st, 6's, J. & D.	71	71
1st, R. R. & land grant	47	47
No. 16, incomes	5	8½
Lake Shore—		
Mich. So. 2d M., 7's		
M., S. & N. I. skg. fd., 7's	108	110⅛
Cleve. & Tol. skg. fd.	108¼	110½
Cleve. & Tol. new	102½	104
111 Lake Sh., C., P. & A., old	104	105
C., P. & A., new	107	110
Buffalo & Erie, new	106	107
Buff. & State Line, 7's	105	105½
Kal. & W. P. 1st mort.	85	90
Det., M. & T. 7's, 1906	105	106¼
Lake Shore dividend	106¼	107½
Consol., coup., 1st	109	109¾
Consol., reg., 1st	107¼	109
Consol., coup., 2d	97	100¼
Consol., reg., 2d	95	97½
Long Island 1st mort.	80	87
L. & Nash. cons. 7's, '98	97	101¼
2d mort., gold		
Mar. & Cin. 1st mort.	88	92½
Memph. & Char. 1st M.	81	87
Mich. C. cons. 7's, 1902	104	105⅞
1st mort., 8's, '82, S. F.	109	110
Mo., Kan. & T. 7's, ass'd	52¼	53¼
2d mort., income	15	15½
Morris & E. 1st mort.	114	115
2d mort.	104	105½
Bonds, 1900		
Construction	72	75
7's of 1871	96	97
1st, con., gold	86½	90
Nash., C. & St. L. 1st, 7's	82	85
Nashv. & Dec. 1st M., 7's	91½	94½
N. J. South. 1st mort., 7's	19	21
N. Y. Central 6's, 1883	103	104¼
6's, 1887	105	107
6's, real estate	101	102½
6's, subscription	101	102½
N. Y., C. & H. 1st, coup.	119	120
1st reg.	117	120

	Hud. R., 2d, 7's, S. F., '95	112½	113½
	N. Y. Elevated 1st M.	67½	75
	N. Y. & Harlem 1st, 7's	115	118
112	1st mort., 7's, reg.	116	118
	No. Missouri 1st mort.	101½	103
	O. & Miss. cons. skg. fd.	93½	98⅞
	Consolidated	93	98⅞
	2d consolidated	55¼	57
	1st mort., Springf. div.		
	Pac. R. of Mo. 1st mort.	97	100⅛
	2d mort.	90	93¾
	1st, Carondelet br'nch		
	P., Ft. W. & C. 1st mort.	117	119
	2d mort.	111	112
	3d mort.	100	105
	Rens'r & Sar. 1st, cp.	111½	112
	1st mort., reg.	111½	112
	Rome, W. & Og. con., 1st	46½	46½
	St. L., Alton & T. H. 1st	105	109
	2d mort., pref.	83½	86¼
	2d mort., income	66⅛	66⅛
	B. & S. I. 1st, 8's	85	89
	St. L. & I. Mt. 1st mort.	99½	103
	2d mort.	53	53
	South Side 1st mort.		
	Sinking fund	25	26
	S. Pac. of Cal. 1st, "A"		
	So. Pac. R. R. 1st mort.	74	75
	Tol., Can. S. & D. 1st M.		
	With int. certif's		
	Tol., P. & W. 1st., E. div.	90	91
	1st mort., W. div.	89	90
	Burlington div.	28	30
	Tol., P'ria & W. 2d mort.	27	28
	Consol., 7's	26	27
	Tol. & Wab. 1st exten.	115	115
	Ex-coup.	94	101
	1st mort., St. L. div.	84	88
	Ex-matured coup.	75	78
	2d mort.	78	85
	Ex. & Nov., '77, coup.	70	74
113	Equipment		
	Consol., convertible	51⅝	58
	Ex-aug., '78, & prev's	34	46
	Gt. West. 1st, 1888	107	115
	Ex-coup.	91½	98
	2d mort., 1893	74½	80
	Ex-mat. & Nov., '77, C.	62	69
	Quincy & Tol. 1st, '90	73	73
	Ill. & So. Iowa 1st M.		
	Ex-coup.	75	75

Han. & Cent. Mo. 1st	75	76
Union Pac. 1st mort.	106	107¼
Land grant, 7's	103¼	103⅞
Sinking fund	94¼	95½
West. U. Tel., 1900, cp.	103½	106
Reg.	103½	104½

114 *Copy of Agreement to Try Without a Jury under Act of* 1874.

W. W. JENNINGS *vs.* COAL RIDGE IMPROVEMENT AND COAL COMPANY. } In the Court of Common Pleas of Northumberland County. No. 25. February Term, 1888.

It is hereby agreed that a trial by jury be dispensed with in the above-stated case, and that the same be submitted to the decision of the court, to be heard and determined under the provisions of an act entitled "An act to provide for the submission of civil cases to the decision of the court, and to dispense with trial by jury," approved the 22nd day of April, 1874, subject, however, to a writ of error as in other cases, at the option of either party.

December 23, 1887.

M. E. OLMSTED,
Attorney for Plaintiff.
S. P. WOLVERTON,
Attorney for Defendant.

Endorsement: No. 25. Feb'y term, 1888. W. W. Jennings *vs.* Coal Ridge Improvement and Coal Company. Agreement to try without a jury under act of 1874. Filed Dec. 23, 1887.

115 W. W. JENNINGS *vs.* THE COAL RIDGE IMPROVEMENT AND COAL COMPANY. } In the Court of Common Pleas of Northumberland County. No. 25. February T., 1888.

The act of June 30, 1885 (P. L. 193), in its first section enacts "that all mortgages * * * shall be, and are hereby, taxable for State purposes at the rate of three mills on the dollar of the value thereof annually," being but a repetition of the 17th section of the act of June 7, 1879, and the first section of the act of June 10, 1881. Having thus made all mortgages taxable, the act of 1885 leaves mortgages issued by individuals and mortgages issued by foreign corporations not doing business in Pennsylvania to be assessed in the hands of the holders under former general laws in relation thereto, which laws require them to be assessed "according to the actual value thereof and at such rates and prices for which the same would separately *bona fide* sell." (See section 4, act of May 15, 1841, P. L. 394, and section 9, act of July 27, 1842, P. L. 445), of which assessment the owner is required to be notified and from which he is given the right of appeal. (See act of April 15, 1834, P. L. 512, section 8–16.)

But mortgages issued by corporations chartered by or doing business in Pennsylvania are, by the fourth section of the act of 1885, required to be assessed arbitrarily at their nominal or par value upon the payment of interest by the treasurer of the corporation, who is commanded to deduct the tax thus assessed from the interest paid.

There are a great many mortgages owned by residents of Pennsylvania and taxable under the first section of the act which, having been issued by foreign corporations not doing business here, are not subject to the provisions of the fourth section and the actual value of many of them is below their nominal or par value.

The actual value of mortgages issued by corporations of Pennsylvania differs from their nominal or par value, in some cases being above and in other cases being below the par value.

The plaintiff, a resident of Harrisburg, Pennsylvania, owned bonds of the par value of $20,000 (but whose actual value was not greater than three-fourths of their par value), issued by defendant corporation and secured by mortgage upon part of its property. By the terms thereof there was due as interest December 1, 1887, $600, which amount was tendered, less $30 deducted for State tax, under section 4 of the act of 1885. The tender having been refused and suit brought for the recovery of the full amount of interest, held—

(1.) That the only tax to which bonds and mortgages are made subject by the act of 1885 is an annual tax upon the actual value
116 thereof, of which there must be a legal assessment or ascertainment, with notice to the owner and right of appeal, before any tax can lawfully be due. There having been no such assessment of plaintiff's bonds, no tax was due December 1, 1887, and the company was not authorized to withhold any portion of the interest due.

(2.) The first section of the act of 1885 provides but one class of taxable mortgages, namely, "all mortgages," but the fourth section produces a want of uniformity in the taxation of members of the same class, as in the method of assessment it discriminates between mortgages issued by corporations of Pennsylvania, which are to be assessed at their nominal value, and mortgages issued by individuals, which are to be assessed at their actual value; also between mortgages issued by corporations of Pennsylvania, which are to be assessed at their nominal value, and mortgages issued by corporations of other States, but owned by residents of Pennsylvania, which are to be assessed at their actual value, and also between different mortgages issued by corporations of the State of Pennsylvania, some of which are required to be assessed above and others below their actual value. The fourth section is, therefore, in violation of section 1 of article IX of the constitution of Pennsylvania, which requires that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

(3.) The said fourth section, because of the arbitrary and discriminative method of assessment therein provided, without notice to or the right of appeal on the part of the holder of the property taxed, is also in conflict with section 1 of article XIV of the amendments to the Constitution of the United States, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

(4.) For the same reason the said section is in conflict also with the provisions of article V of the amendments to the Constitution of the United States, which provides that "no person shall * * * be deprived of life, liberty, or property without due process of law."

(5.) For the same reason it is also in violation of section 9 of article I of the constitution of Pennsylvania, which provides that no person shall be "deprived of his life, liberty, or property unless by the judgment of his peers or the law of the land."

(6.) The fourth section of the act of 1885 being unconstitutional, it is, in legal contemplation, as inoperative as if it had never been passed, and afforded neither authority nor protection to the defendant corporation in deducting a tax of three mills from the interest due, and the plaintiff is entitled to recover the full amount thereof.

M. E. Olmsted for the plaintiff.
S. P. Wolverton for the defendant.

117 Hon. Wm. M. Rockefeller, president judge of the court of common pleas of Northumberland county, being engaged in the trial of other causes, called in Hon. C. A. Mayer, president judge of the 25th judicial district, who heard this case, and on the 10th day of February, 1888, filed the following opinion:

This suit was instituted by W. W. Jennings against The Coal Ridge Improvement and Coal Company to recover the sum of six hundred dollars, being the semi-annual interest due December 1st, 1887, on $20,000 of the first-mortgage bonds of said corporation of the denomination of $500 each.

The case has been submitted to the court, without the intervention of a jury, under the provisions of the act of assembly of April 22d, 1874, which requires that the decision of the court shall state separately and distinctly the facts found, the answers to any points submitted in writing by counsel, and the conclusions of law.

The evidence in the case appears in the depositions which have been taken, and there is practically no dispute about the facts, the questions that arise being principally legal ones.

From the evidence I find the following facts:

W. W. Jennings, the plaintiff, is a resident of Harrisburg, Pa., and was the owner on the 1st day of December, 1887, of forty

first-mortgage bonds of the denomination of $500 each, making $20,000, of The Coal Ridge Improvement and Coal Company, the defendant, a corporation of the State of Pennsylvania, doing business in the county of Northumberland. By the terms of these bonds, which were registered, and the mortgage securing the same there was due the plaintiff on the 1st day of December, 1887, the sum of $600, being six months' interest on said bonds.

The plaintiff made demand upon the company for the payment of this interest, to wit, the sum of $600, to which defendant responded by tendering to the plaintiff the sum of $570, being the interest less the sum of $30, which the defendant claimed to deduct as a tax of three mills upon the nominal value of the bonds. This tax was deducted under the provisions of an act of assembly approved June 30th, 1885, entitled "A further supplement to an act entitled An act to provide revenue by taxation," approved the 7th of June, one thousand eight hundred and seventy-nine.

The only sections of this act which are material in this controversy are the first and fourth sections and the proviso to the sixth section, which are as follows

118 "SECTION 1. Be it enacted, &c., that all mortgages, money owing by solvent debtors, whether by promissory note, or penal or single bill, bond or judgment, also, all articles of agreement and accounts bearing interest, owned or possessed by any person or persons whatsoever, (except notes or bills for work or labor done, and all obligations given to banks for money loaned and bank notes,) and all public loans or stock whatsoever, (except those issued by this Commonwealth or the United States,) and all moneys loaned or invested in any other State, and all other moneyed capital in the hands of individual citizens of the State, shall be and are hereby taxable for State purposes at the rate of three mills on the dollar of the value thereof annually; provided that the same shall, after the passage of this act, be exempt from all taxation, except for State purposes; provided, the provisions of this act shall not apply to building and loan associations."

"SECTION 4. That hereafter it shall be the duty of the treasurer of each private corporation, incorporated by or under the laws of this Commonwealth, or the laws of any other State, or the United States, and doing business in this Commonwealth, upon the payment of any interest upon any scrip, bond or certificate of indebtedness, issued by said corporation to residents of this Commonwealth, and held by them, to assess the tax imposed and provided for State purposes upon the nominal value of each and every evidence of debt, and to report on oath, annually on the last Monday of November to the auditor general the amount of indebtedness of the corporation owned by residents of this Commonwealth, as nearly as the same can be ascertained; and it shall be his further duty to deduct three mills on every dollar of the interest paid as aforesaid and return the same into the State treasury within fifteen days after the 21st day of December in each year; and his compensation for his services shall be the same that city and borough treasurers receive for similar services; and for every failure to assess

and pay said tax and make report as aforesaid, the auditor general shall add ten per centum as a penalty to the amount of the tax; in payment of said tax by a corporation, the bonds, certificates or other evidences of indebtedness issued by it shall be exempt from all other taxation in the hands of the holders of the same."

"SECTION 6. * * * Provided, that the taxable persons shall not include in said return the obligations of public or private corporations, the tax upon which is required by law to be collected from the holder of such obligation and paid into the State treasury by the corporation."

The first section of the act of June 30th, 1885, is an exact copy of the seventeenth section of the act of June 7th, 1879, and the first section of the act of June 10th, 1881, with the exception
119 of the omission of bank shares, which are made the subject of a separate section, the second section.

Under these two sections of 1879 and 1881 it has been decided by the Supreme Court in the case of the Commonwealth *vs.* The Lehigh R. R. Co., 8 Out., 89, that the word "value" as used in these acts meant the actual value and not the nominal or par value of bonds and mortgages, and that a legal ascertainment of that value was essential to the assessment of a valid tax.

I find as a fact that the actual value of the bonds of the Coal Ridge Improvement and Coal Company is not greater than three-fourths of their par value, and that the interest on the bonds of said company of late years has been paid from the earnings of that portion of this company's property not covered by the mortgage.

I find also from the evidence that the actual value of corporation securities held by individuals differ from their nominal or par value. In some cases it is below and in other cases above par.

I further find that the securities issued by foreign corporations not doing business in Pennsylvania and held by residents of Pennsylvania and those issued by individuals and owned in Pennsylvania are assessed at their actual value.

I further find that there are a great many bonds of foreign corporations not doing business in Pennsylvania held by residents of Pennsylvania, the actual value of many of which bonds is much below their par value.

Plaintiff's Points and Answers of the Court.

1. By the fourth section of the act of June 30th, 1885, the defendant was authorized to deduct from interest due to plaintiff only a tax of three mills upon said interest.

Answer of the court: Refused.

2. The only tax to which bonds and mortgages are made subject by the act of June 30th, 1885, is an annual tax upon the actual value thereof, and before any tax can be lawfully due upon any bond or mortgage there must be a legal assessment or ascertainment of its actual value, with notice to the owner and right of appeal. There having been no such assessment of the plaintiff's bonds, no tax was

due December 1, 1887, and the defendant company was there-
120 fore not lawfully authorized to with hold any portion of the interest due by the terms of the bonds and mortgages securing them.

Answer of the court: Affirmed.

3. The first section of the act of June 30th, 1885, rendered all mortgages, bonds, &c., taxable at three mills on their actual value. Mortgages issued by individuals and mortgages issued by corporations not doing business in Pennsylvania, but owned by residents of Pennsylvania, are assessed under the general laws of the Commonwealth at their actual value, with notice to the owner of the property and the right of appeal; but by the fourth *fourth* section of the act of 1885 bonds and mortgages issued by corporations of the State of Pennsylvania, including those owned by the plaintiff, are required to be assessed arbitrarily at their nominal or par value, with no notice to the holder and no right of appeal. This discrimination in the mode of assessment of different subjects of the same class is in violation of section 1 of article IX of the constitution of Pennsylvania, which requires that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the same."

Answer of the court: Affirmed.

4. By the fourth section of the act of 1885 all bonds and mortgages issued by corporations of the State of Pennsylvania are required to be assessed and taxed arbitrarily upon their nominal value, without notice to the owner or the right of appeal. By reason of such arbitrary assessment the mortgage bonds owned by plaintiff, whose actual value is at least twenty-five per cent. below their nominal value, as well as all other bonds issued by corporations of Pennsylvania, and whose actual value is less than their nominal value, are required to pay the same tax as other bonds issued by corporations of Pennsylvania whose actual value is much above their nominal or par value, in some instances being nearly double the actual value of defendant's bonds. By reason of its requiring such arbitrary assessment, the act is in conflict with section 1, article IX, of the constitution of Pennsylvania, which requires that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the same."

Answer of the court: Affirmed.

5. By the first section of the act of 1885 all bonds, mort-
121 gages, &c., owned by residents of Pennsylvania are made taxable at three mills upon their actual value. Under the general laws of the Commonwealth all such property is to be assessed at its actual value, with notice to the owner and the right of appeal to the county commissioners, whose action is in turn reviewed by the State board of revenue commissioners, except as to bonds and mortgages issued by corporations created by or doing business in Pennsylvania, which are by the provisions of the fourth section of the said act drawn out from the general plan of assessment and required to be assessed arbitrarily at their nominal or par

value. By reason of the discrimination thus made between the assessment of mortgages issued by corporations of the State of Pennsylvania and those issued by individuals and foreign corporations, and by reason of the arbitrary assessment of bonds and mortgages issued by Pennsylvania corporations, whose actual value is less than their nominal or par value, as in the case of plaintiff, at the same price as other bonds issued by Pennsylvania corporations, whose actual value is much greater than their nominal or par value, the said fourth section is in conflict with section 1, article XIV, of the amendments to the Constitution of the United States, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Answer of the court: Affirmed.

6. For the reasons stated in point 5 the act of 1885 is in violation of section 9 of article I of the constitution of Pennsylvania, which provides that no person shall be deprived of his life, liberty, or property unless by the judgment of his peers or the law of the land.

Answer of the court: Affirmed.

7. For all the reasons stated in point No. 5 the act of 1885 is also in conflict with the provisions of article V of the amendments to the Constitution of the United States, which provides that "no person shall be * * * deprived of life, liberty, or property without due process of law."

Answer of the court: Affirmed.

122 8. For the reasons stated in point No. 5 the act of 1885 is in conflict with section 10 of article I of the constitution of Pennsylvania, which provides that private property shall not be taken or applied to public use without authority of law and without just compensation being first made and secured.

Answer of the court: Refused. This provision of the constitution relates to the exercise of the right of eminent domain and is not a limitation upon the taxing power.

9. As there had been no lawful assessment of plaintiff's bonds, and no tax was thereon due to the Commonwealth of Pennsylvania upon the first day of December, 1887, the act of June 30, 1885, if it required the treasurer of the corporation, defendant, to retain or withhold any sum whatsoever from the said interest, is void because in conflict with section 10 of article I of the Constitution of the United States, which forbids the States to pass any law impairing the obligation of contracts.

Answer of the court: Refused.

Conclusions of Law.

1. The fourth section of the act of June 30, 1885, is violative of article IX of the constitution of Pennsylvania, which requires that "all taxes shall be uniform upon the same class of subjects within

the territorial limits of the authority levying the same." Prior to the adoption of the present constitution the whole matter of taxation was committed to the discretion of the legislature. It might be levied upon such property and in such proportion as the legislature saw fit. As was said by Woodward, C. J., in the case of Maltby *vs.* Reading & Columbia Railroad Co. (2 P. F. S., 145), decided in 1866, "the power of taxation, which is the corner-stone of the Government, is lodged exclusively in the legislature and depends wholly on the discretion of that department." But this legislative discretion no longer exists to its full extent, and its exercise is restricted by the constitutional provision which requires equality and uniformity in the imposition of the public burdens. The constitutions of many of the States contain similar provisions enforcing this principle of equality and uniformity. In some the provision is "that taxation shall be equal and uniform throughout the State," in others that "the legislature shall provide a uniform
123 rule of taxation," or "that the rule of taxation shall be uniform." The general principle intended to be enforced by these constitutional provisions is that taxes shall be assessed according to some rule of apportionment, so that the owners of one species of property shall pay the same amount as another owner of the same kind of property. In the constitution of the State of Ohio, which provides for taxation by a uniform rule, the supreme court of that State, in construing this provision, says: "Taxation is required to be by a uniform rule—that is, by one and the same unvarying standard." Taxation by a uniform rule requires uniformity not only in the rate of taxation, but also uniformity in the mode of assessment upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment as well as the rate of taxation. (Exchange Bank of Columbus *vs.* Ohio, 3 O. S. Rep., 1.) In The City of Zanesville *vs.* Richard, from the same State (5 Ohio St. Rep., 589), the supreme court used the following language: "The General Assembly is no longer invested with the discretion to apportion the tax and to determine upon what property and in what proportion it shall be laid. A uniform rate per cent. must be levied upon all property subject to taxation according to its true valuation money, so that all may bear an equal burden."

In Township of Pine Grove *vs.* Talcott (19 Wall. U. S. Rep., 666), which was a case that arose under the constitution of the State of Michigan, that contains a provision that "the legislature shall provide a uniform rule of taxation," Justice Swayne, in speaking of this clause of the Michigan constitution, says: "The 11th clause of the same article declares that the legislature shall provide a uniform rule of taxation, except as to property paying specific taxes, and that taxes shall be levied upon such property as shall be prescribed by law. The object of this provision was to prevent unjust discrimination. It prevents property from being classified and taxed as classed by different rules. All kinds of property must be taxed uniformly or be entirely exempt. The uniformity must be coextensive with the territory to which the tax applies. If a State

tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout such county or city."

124 In Knowlton *vs.* The Supervisors of Rock County (9 Wis. Rep., 410) the section of the Wisconsin constitution requiring uniformity of taxation underwent a thorough examination, and the supreme court of that State laid down the following propositions: "The constitution of the State requires, as a rule in levying taxes, that the valuation must be uniform and in all cases alike or equal, operating alike upon all the taxable property throughout all the territorial limits of the State or municipality within which the tax is to be raised; and where the legislature prescribed a different rule the act is a departure from the constitution, and therefore void."

"The constitution has fixed one unbending, uniform rule of taxation for the State, and property cannot be classified and taxed as classed by different rules."

In the Attorney General *vs.* The Winnebago Lake and Fox River Plank Road Company (11 Wis. Rep., 42) the court say "that those who framed the constitution of that State did provide that whatever property was made taxable at all should be taxed by a uniform rule, which was designed to secure equality in the burdens as between the different kinds of taxable property, but of course not as between property taxable and that not taxable."

In the case of Gilman *vs.* City of Sheboygan (2 Black, 518) the Supreme Court of the U. S. affirmed the soundness of the conclusions of the supreme court of Wisconsin in these cases.

We are aware that it is an axiom in American jurisprudence that a statute which is said to be in conflict with the constitution of the State is not to be pronounced void upon this ground unless the repugnancy to the constitution be clear. Every doubt is to be resolved in support of the enactment; but in view of these authorities we are of the opinion that the fourth section of the act of June 30, 1885, is in conflict with article IX of the constitution in the following particulars:

1. As between mortgages issued by corporations of Pennsylvania which are to be assessed at their nominal value and mortgages issued by individuals which are to be assessed at their actual value. In the former case the holder of a corporation bond secured by a mortgage would, under the fourth section, have to pay three mills tax on the nominal value of his bond regardless of its actual

125 value, while the holder of an individual bond or a bond of a foreign corporation, secured by a mortgage, would only be called on to pay three mills tax on the actual value of his bond, ascertained and determined by the machinery provided by law for that purpose. This want of equality and uniformity is apparent in the present case, which requires the holder of the bond of defendant company to pay the three mills tax upon his bonds assessed at 100 cents on the dollar, when in fact their actual value is but 75 cents on the dollar.

2. As between mortgages issued by corporations of Pennsylvania which are to be assessed upon their nominal value and mortgages

issued by corporations of other States, but owned by residents of Pennsylvania, which are to be assessed at their actual value. The evidence in this case shows that there is a large amount of bonds of foreign corporations owned and held by residents of Pennsylvania, the actual value of which is much below their par value; but it is contended that notwithstanding the constitutional requirements as to uniformity of taxation upon the same class of subjects, the legislature has the power to define classes.

In support of the constitutionality of the fourth section of the act of June 30, 1885, it is contended that the classification of property for purposes of taxation is left to the discretion of the legislative power, notwithstanding the constitutional provision as to uniformity of taxes upon the same class of subjects, and that if all the subjects in each class are taxed uniformly the constitutional mandate is complied with. There can be no doubt of the power of the legislature to pass acts classifying subjects for the purpose of taxation, and where such classification does not violate the constitutional provision as to uniformity they will be sustained. The office of the constitutional provision is to deprive the legislature of the right to arbitrarily select subjects for the purposes of taxation and to prohibit arbitrary selection as contradistinguished from classification. To take part of a class of subjects, the whole being similarly conditioned, and subject it to a different or greater rate of taxation than is imposed on the balance of the same class is an arbitrary exercise of the legislative will and not a classification. The legislature cannot by its mere fiat convert part of a class into a class. But in the present case no classification has been attempted. The first section of the act designates the subjects of taxation and
126 fixes the rate and makes no discrimination between mortgages issued by corporations and those issued by individuals or between mortgages issued by corporations of this State and those by corporations of another State. The only class of subjects made taxable by that section are "all mortgages." The vice of the act consists not in the classification, but in providing different methods of ascertaining the value of different subjects of the same class. Part of the same class are assessed at their actual value by the first section and a part at their nominal value by the fourth section; but conceding that the legislature by the fourth section had classified mortgages issued by corporations by placing them in a separate and distinct class, the tax assessed upon their nominal value would not be uniform, for the reason that there is a great difference between the nominal and actual value of mortgages issued by corporations of the State of Pennsylvania. This will appear in the evidence taken on the part of the plaintiff.

The fourth section of the act of 1885 is in conflict with that provision of the constitution of Pennsylvania which declares that "no person shall be deprived of life, liberty, and property unless by the judgment of his peers or the law of the land," and the fourteenth amendment to the Constitution of the United States, which provides that no State "shall deprive any person of life, liberty, or property

without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

It has been decided by the Supreme Court of the United States that corporations are persons within the intent of the clause in section 1 of the fourteenth amendment to the Constitution of the United States, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws. Santa Clara Co. *vs.* South. Pac. Railroad (U. S. Rep., vol. 118, page 396).

It is well settled that the words "the law of the land" have the same origin and are to the same effect as "due process of law" in the bill of rights in the Constitution of the United States, and it means judgment of law in its regular course of administration through courts of justice. Fetter *vs.* Wilt, 46 Pa. St. Rep., 460. It
127 does not mean merely an act of the legislature, for that would abrogate all restriction or legislative power. 2 Kent, 13, in note.

"By due process" is meant one which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law. It must be adapted to the end to be attained, and it must give to the party to be affected an opportunity of being heard respecting the justice of the judgment sought. Without these conditions entering into the proceeding it would be anything but due process if it touched life or liberty. It would be wanton punishment or, rather, wanton cruelty. If it touched property it would be arbitrary exaction. It is significant that the guarantee against the deprivation of property without due process of law is contained in the clause which guarantees against a like deprivation of life and liberty, and it means that there shall be no proceeding against either without the observance of all the security applicable to the case recognized by the general law, by those principles which are established in all constitutional governments for the protection of private rights. Notice is absolutely essential to the validity of the proceeding in any case. It may be given by personal citation, and in some cases it may be given by statute, but given it must be in some form. If life and liberty are involved there must be a regular course of judicial proceedings; so also where title or possession of property is in contention; but in the taking of property by taxation the proceeding is more summary and stringent. The necessities of revenue for the support of government will not admit of delays attendant upon judicial proceedings in courts of justice. The statute fixes the rate of taxation upon the value of the property and appoints officers to estimate and appraise the value. Due process of law in the proceeding is deemed to be pursued when, after the assessment is made by the assessing officers upon such information as they may obtain, the owner is allowed a reasonable opportunity, at a time and place to be designated, to be heard respecting the correctness of the assessment and to show any errors in the valuation committed by the officers. Notice to him will be deemed sufficient if the time and place for hearing be designated by statute; but whatever the character of the proceeding, whether judicial or administrative, summary

or protracted, and whether it takes property directly or
128 creates a charge or liability which may be the basis of taking it, the law directing the proceeding must provide for some kind of notice and offer to the owner an opportunity to be heard or the proceeding will want the essential ingredient of due process of law. Nothing is more clearly established by a weight of authority absolutely overwhelming than that notice and opportunity to be heard are indispensable to the validity of the proceeding." County of San Mateo *vs.* Southern Pacific Railroad, Am. & Eng. R. R. cases, vol. VIII, page 27, &c.

In a case decided by the court of appeals of the State of New York this question has been very fully and exhaustively presented. The validity of an assessment for a public street improvement was involved, and upon the decision of this question the case was determined. The validity of the law under which the assessment was made was assailed. Mr. Justice Earl, delivering the opinion of the court, says:

"The latter assessment could be made without any notice to or hearing of any person. The law requires notice, and a provision for notice cannot be implied. Upon the assumption that the law was valid, there was ample authority for the commissioners to make the assessment without any notice or hearing." (Stuart *vs.* Palmer, 74 N. Y., 186.) The judge proceeds: "I am of the opinion that the constitution sanctions no law imposing such an assessment without a notice to and a hearing or an opportunity of a hearing by the owners of the property to be assessed. It is not enough that the owners may by chance have notice or that they may, as a matter of favor, have a hearing. The law must require a notice to them and give them a right to a hearing and an opportunity to be heard. It matters not upon the question of the constitutionality of such a law that the assessment has in fact been fairly apportioned. The constitutional validity of a law is to be tested, not by what has been done under it, but what may, by its authority, be done. The legislature may prescribe the kind of notice and the mode in which it shall be given, but it cannot dispense with all notice.

"The legislature can no more arbitrarily impose an assessment for which property may be taken or sold than it can render a judgment against a person without a hearing. It is a rule founded on the
first principles of natural justice, older than written constitu-
129 tions, that a citizen shall not be deprived of his life, liberty, or property without an opportunity to be heard in defense of his rights, and the constitutional provisions that no person shall be deprived of these without due process of law has its foundation in this rule. This provision is the most important guarantee of personal rights to be found in the Federal or State constitutions. It is a limitation upon arbitrary legislation. No citizen shall arbitrarily be deprived of his life, liberty, or property. This the legislature cannot do or authorize to be done. 'Due process of law is not confined to any judicial proceedings, but extends to every case which may deprive a citizen of his life, liberty, or property, whether the proceeding be judicial, administrative, or executive in its nature.

This great guarantee is always and everywhere present to protect the citizen against arbitrary interference with these sacred rights.'

"No case, it is believed, can be found in which it was decided that the constitutional guarantee did not extend to cases of assessments, and yet we may infer from certain dicta of judges that their attention was not called to it or that they lost sight of it in the cases which they were considering. It has sometimes been intimated that a citizen is not deprived of his property, within the meaning of this constitutional provision, by the imposition of an assessment. It might as well be said that he is not deprived of his property by a judgment entered against him. A judgment does not take property until it is enforced, and then it takes the real or personal property of the debtor. So an assessment may be enforced, not only against the real estate upon which it is a lien, but, as in this case, against the personal property of the owner also, and by it he may just as much be deprived of his property, and in the same sense as the judgment debtor is deprived of his by the judgment."

This case decides that parties are not only entitled to the notice, but that "the law must require a notice to them and give them a right to a hearing and an opportunity to be heard."

In City of Philadelphia *vs.* Miller, 13 Wright, 448, Agnew, J., said: "Notice, or at least the means of knowledge, is an essential element of every just proceeding which affects the rights of persons or property."

In Thomas *vs.* Gain, 35 Mich., 155, Cooley, C. J., after citing this case of Philadelphia *vs.* Miller, said: "Parties whose property is to be taken under summary tax proceedings are entitled as of
130 right to be heard at some stage of the proceeding before the tax shall become an established charge against them or their property."

In Davidson *vs.* New Orleans, 96 U. S., 97, it was assumed, and not controverted, that the party taxed must have an opportunity to be heard. "Whenever, by the laws of a State or by State authority, a tax, assessment, servitude, or other burden is imposed upon property for public use, whether it be for the whole State or some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice, with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

The clauses of the various State constitutions prohibiting the taking of property without due process of law have frequently been held as applicable to the subject of taxation. Philadelphia *vs.* Miller, 49 Pa. St., 440; Commonwealth *vs.* Runk, 26 Pa. St., 235; Darling *vs.* Yunn, 50 Ill., 424; State *vs.* Drake, 33 N. L. J., 194; Butler *vs.* Supervisors of Saginaw, 26 Mich., 22.

Those authorities clearly establish that where a law provides for the assessment of a tax, before the amount of the assessment is finally determined, there must be a provision in the statute for

notice to the owner of the property taxed and an opportunity afforded him to interpose his objections and have a hearing. In some form he must be given the opportunity to defend his interests. The fourth section of the act of 1885 imposes an arbitrary assessment upon all bonds and mortgages issued by corporations of the State of Pennsylvania upon their nominal value, and there is no provision made in the act for notice to the owner or the right of appeal. In my opinion, there being no provision made in the fourth section whereby the owner of such bonds and mortgages is afforded an opportunity of being heard respecting the assessment, the act is in conflict with the constitutional provision of both the State of Pennsylvania and the United States. "It conflicts with the great principle which lies at the foundation of all just government, that no one shall be deprived of his life, his liberty, or
131 his property without an opportunity of being heard against the proceeding. The principle is as old as Magna Charta, and embodied in all the State constitutions and in the fourteenth amendment of the Constitution."

The last question presented for our determination and which I deem the vital one is whether the bonds and mortgages issued by Pennsylvania corporations are subject to the same rules of assessment and taxation to which bonds and mortgages of individuals are subject, or whether the latter can be distinguished from the former and subjected to the imposition of such different burdens in the way of taxation as the State may elect to prescribe. The fact that corporations have issued the bonds and created the mortgages should be allowed no consideration in endeavoring to arrive at a correct conclusion. A mortgage, whether issued by a corporation or by an individual, is a mortgage. The personality of the mortgagor, whether natural or artificial, does not change the character of the instrument.

It cannot be controverted that as to all subjects within its jurisdiction the State may exercise the power of taxation to any extent not prohibited by the Constitution of the United States. "It may touch property in every shape, in its natural condition, in its manufactured form, and its various transmutations; and the amount of the taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportations. Unless restricted by provisions of the Federal Constitution, the power of the State as to the mode, form, and extent of taxation is unlimited when the subjects to which it applies are within her jurisdiction. Corporations may be taxed like natural persons upon their property and business." (State Tax on Foreign-Held Bonds, 15 Wall., 319.)

The extent and scope of the fourteenth amendment to the Constitution of the United States has been very clearly and ex-austively presented in the opinion of Field, C. J., in the case of The County of San Mateo *vs.* Southern Pacific Railroad (Am. & Eng. R. R. Cases, vol. VIII, page 11, &c.), in the course of which he says: "The fourteenth amendment to the Constitution in declaring that no State

shall deny to any person within its jurisdiction the equal protection of the laws imposes a limitation upon the exercise of all
132 the powers of the State which can touch the individual or his property, including among them that of taxation. Whatever the State may do, it cannot deprive any one within its jurisdiction of the equal protection of the laws; and by equal protection of the laws is meant equal security under them to every one on similar terms—in his life, his liberty, his property, and in the pursuit of happiness. It not only implies the right of each to resort on the same terms with others to the courts of the country for the security of his person and property, the prevention and redress of wrongs, and the enforcement of contracts, but also his exemption from any greater burdens or charges than such as are equally imposed upon all others under like circumstances."

"Unequal exaction in every form or under any pretense are absolutely forbidden, and, of course, unequal taxation, for it is in that form that oppressive burdens are usually laid. It is not possible to conceive of equal protection under any system of laws where arbitrary and unequal taxation is permissible; where different persons may be taxed on their property of the same kind, similarly situated, at different rates; where, for instance, one may be taxed at one per cent., or where one may be thus taxed according to his color—because he is white or black or yellow—or according to any other rule than that of a fixed rate proportionate to the value of his property."

"In the constitution of several States a provision is found requiring 'equality and uniformity' in the taxation of property, and this is held to mean that taxes must be levied according to some fixed rate or rule of appointment, so that all persons shall pay the like amount upon similar kinds of property of the same value."

"As the foundation of all just and equal taxation is the assessment of property taxes—that is, the ascertainment of its value—in order that the tax may be levied according to some ratio in the value, uniformity of taxation necessarily requires uniformity in the mode of assessment as well as in the rate of taxation, or, to quote the language of the supreme court of Ohio expressing the same thought, 'Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment as well as in the rate of taxation.'" Exchange Bank of Columbus *vs.* Hines, 3 Ohio St., 1.

"It is no answer to this discrimination to say that property
133 in the State may be divided into classes and different rates prescribed for them. Undoubtedly property may be classified for purposes of taxation. Real property may be subjected to one rate of taxation, personal property to another rate. Property in particular districts may be taxed for local purposes, while property elsewhere may be exempt. Taxation on business in the form of licenses may also vary according to the calling or occupation licensed and the extent of business transacted, but even then there must be uniformity of charges with respect to the same calling or occupation in the same locality. It is, however, only with the taxation

of property that we are concerned in this case, and the whole object of classifying property is that each class may be subjected to a special rate of taxation. There is no difference in the rate prescribed by the law of the State for the property of railroad corporations and the rate prescribed for the property of individuals. There is only one rate for all property. There is, therefore, no case presented for the application of the doctrine of classification. The discrimination complained of arises from the different rule adopted in ascertaining the value of the property of railroad corporations as *as* a basis for taxation, not from any different rate of taxation when the value is established. In all taxes upon property, whatever its form or nature, the property is taken as representing a pecuniary value; is standing for so much money invested. The tax is the rate per centum of this pecuniary value. The value being ascertained, the law fixes the rate. The ground of complaint here is that the law requires a higher value to be placed upon the defendants' than upon the property of individuals similarly incumbered, or rather requires the assessor of the defendants' property, in estimating its value, to disregard and set aside certain elements materially affecting its amount, which are to be considered in estimating the value of the property of individuals. It is not classifying property to make this distinction in determining its value."

I am of the opinion that by the provisions of the first and fourth sections of the act of 1885 an unlawful discrimination is made between bonds and mortgages and other evidences of debt issued by individuals and those issued by corporations of the State of Pennsylvania, to the disadvantage of holders of bond- and mortgages issued by corporations of said State, by subjecting
134 the holders of their securities to an unequal share of the public burdens, and to that extent depriving them of the equal protection of the laws guaranteed by the fourteenth amendment to the Constitution of the United States. This discrimination also operates unfairly to the disadvantage of Pennsylvania corporations in that it affects the market value of their securities by imposing on them a burden of taxation greater than that imposed on similar securities issued by individuals and foreign corporations. Bonds and mortgages and evidences of debt issued by individuals and foreign corporations are subject to one rule of assessment and taxation, viz., at their actual value, while in the case of those issued by corporations of Pennsylvania another rule is prescribed, viz., their nominal value. In my judgment, such discriminative rules would be violative of the fourteenth amendment, which guarantees to every person or corporation the equal protection of the laws, and that necessarily implies freedom from the imposition of unequal burdens under the same conditions. This departure from the rule of equality will appear by a comparison between the scheme of taxation prescribed by the act of 1885 for bonds, mortgages, and other evidences of debt issued by individuals and foreign corporations and those issued by corporations in Pennsylvania. Under the fourth section of the act of 1885 the bonds of defendant are assessed at their nominal value, to wit, 100 cents on the dollar, when, in fact, their actual

value is but 75 cents on the dollar, while the bonds of individuals and foreign corporations not doing business in Pennsylvania are assessed at their actual value; and in many cases, as the evidence shows, the actual value of the bonds of foreign corporations is far below their nominal value. The inequality will further appear by the fact that the actual value of bonds of many of the Pennsylvania corporations exceed their nominal value.

This mode of assessment and taxation creates a discrimination with regard to the bonds and mortgages issued by Pennsylvania corporations in disregard of the rule of equality, which the first section of the fourteenth amendment was designed to protect. In answer to this discrimination, it is contended that for the purposes of taxation the legislature may classify, and that it has been done so in this instance by placing bonds, mortgages, &c., of individuals and foreign corporations in one class and bonds, mortgages, &c., of Pennsylvania corporations in another class. The power of classification may be conceded, but it does not follow that the mode of classification attempted in this case can be sustained. The act of 1885 prescribes the same rate of taxation for the bonds, mortgages, &c., of individuals and the bonds, mortgages, &c., of Pennsylvania corporations, viz., a three-mill tax.

The discrimination complained of consists not only in the rate, but in adopting a different rule for ascertaining the value of the bonds, mortgages, &c., of corporations of the State as a basis for taxation than that prescribed for the same class of securities issued by individuals and foreign corporations. In the present case the law requires a higher value to be placed on defendant's securities than on the securities issued by individuals or foreign corporations similarly situated.

The fourteenth amendment, in declaring that no State "shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be enforced upon one than such as is prescribed to all for like offenses." Barbier *vs.* Connolly, U. S. Rep., 118, page 31.

Notwithstanding the able and ingenious argument, both oral and printed, presented by the counsel for the defendant in support of the constitutionality of the act of 1885 and of the imposition and

collection of the tax under said act, I am unable to adopt his views, and, for the reasons herein stated, my conclusion is that the fourth section of the said act of June 30, 1885, is in conflict with sec-
136 tion 1 of article IX and section 9 of article I of the constitution of Pennsylvania, and article V and section 1 of article XIV of the amendments to the Constitution of the United States. Being unconstitutional, it is void and inoperative as a law. "An unconstitutional act is not a law. It confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as if it had never been passed." Norton *vs.* Shelby County, 118 U. S., 442. The defendant was consequently not authorized or protected by said act in deducting a tax of three mills from the nominal value of plaintiff's bonds, and plaintiff is entitled to recover full amount of his claim, to wit, the sum of $600; and judgment must be accordingly entered in favor of the plaintiff and against the defendant for the sum of $600, in accordance with the provisions of the second section of the act of April 22d, 1874.

137 *Copy of Notice of Opinion & Decision Filed by C. A. Mayer, P. J.*

W. W. JENNINGS *v.* THE COAL RIDGE IMPROVEMENT AND COAL COMPANY.	In the Court of Common Pleas of Northumberland County. No. 25. February Term, 1888.

Summons in assumpsit submitted to president judge for decision.
C. A. Mayer, P. J.

To M. E. Olmstead, Esq., counsel for plaintiff:

Take notice that Hon. C. A. Mayer, P. J., has this day, Feb'y 10, 1888, filed his opinion and decision in the above case, giving judgment for the plaintiff for $600.00, and that judgment will be entered unless exceptions are filed within thirty days from this date.

S. P. FANSOLD,
Deputy Prothonotary.

To H. F. Mann, prothonotary, —— —, 18—.

Endorsement: No. 25. May term, 1888. W. W. Jennings *vs.* The Coal Ridge Improvement and Coal Company. Notice of opinion and decision filed by C. A. Mayer, P. J. Harrisburg, February 7, 1888. Service of the within notice is hereby accepted. No exceptions will be filed by plaintiff to the decision of the court. M. E. Olmstead, att'y for pl'ff.

138 *Copy of Opinion & Decision Filed by C. A. Mayer, P. J.*

W. W. JENNINGS *vs.* THE COAL RIDGE IMPROVEMENT AND COAL COMPANY.	In the Court of Common Pleas of Northumberland County. No. 25. February Term, 1888.

Summons in assumpsit submitted to president judge for decision.
C. A. Mayer, P. J.

To Hon. S. P. Wolverton, counsel for the defendant:

Take notice that Hon. C. A. Mayer has this day, Feb'y 10, 1888, filed his opinion and decision in the above case, giving judgment for the plaintiff for $600.00, and that judgment will be entered unless exceptions are filed within thirty days from this date.

S. P. FANSOLD,
Deputy Proth'y.

Endorsement: No. 25. February Term, 1888. W. W. Jennings, *vs.* The Coal Ridge Improvement and Coal Company. Notice of opinion and decision filed by C. A. Mayer, P. J. I hereby accept service of the within notice. S. P. Wolverton, att'y for def't. 2, 10, '88.

139 *Copy of Exceptions to Findings and Conclusions of the Court.*

W. W. JENNINGS *vs.* COAL RIDGE IMPROVEMENT AND COAL COMPANY.	In the Court of Common Pleas of Northumberland County. No. 25. February Term, 1888.

The counsel for the defendant respectfully file the following exceptions to the findings and conclusions of law of the learned court and the answers of the learned court to the plaintiff's points:

1st. The learned court erred in affirming the plaintiff's second point, thereby findings as a conclusion of law that the only tax to which the bonds and mortgages are made subject by the act of June 30th, 1885, is an annual tax upon the actual value thereof, and before any tax can be lawfully due upon any bond or mortgage there must be a legal assessment or ascertainment of its actual value, with notice to the owner and the right of appeal, and that, there having been no such assessment of the plaintiff's bonds, no tax was due December 1st, 1887, and that the defendant company were not lawfully authorized to withhold any portion of the interest due by the terms of the bonds and mortgage securing them.

2nd. The learned court erred in affirming the plaintiff's third point, thereby finding as a conclusion of law that the act of June 30th, 1885, is in violation of section first, article ninth, of the constitution of Pennsylvania, which requires that "all taxes
140 shall be uniform upon the same class of subjects within the territorial limits of the authority levying the same."

3rd. The learned court erred in affirming the plaintiff's fourth point, thereby finding as a conclusion of law that the fourth section of the act of 1885 is in conflict with section first, article ninth, of the constitution of Pennsylvania.

4th. The learned court erred in affirming the plaintiff's fifth point, thereby finding as a conclusion of law that the fourth section of the act of June 30th, 1885, is in conflict with section first, article fourteenth, of the amendment to the Constitution of the United States.

5th. The learned court erred in affirming the plaintiff's seventh point, thereby finding as a conclusion of law that the said act is in conflict with the provisions of article fifth of the amendment to the Constitution of the United States.

6th. The court erred in affirming the plaintiff's sixth point, thereby finding as a conclusion of law that the act of June 30th, 1885, is in violation of section ninth, article first, of the constitution of Pennsylvania.

7th. The learned court erred in deciding as a conclusion of law "that the fourth section of the act of June 30th, 1885, is violative of article ninth of the constitution of Pennsylvania, which requires 'that all taxes shall be uniform upon the same classes of subjects within the territorial limits of the authority levying the same.'"

8th. The learned court erred in finding as a conclusion of law that "the fourth section of the act of 1885 is in conflict with
141 that portion of the constitution of Pennsylvania which declares that 'no person shall be deprived of life, liberty, and property unless by judgment of his peers or the law of the land,' and the fourteenth amendment to the Constitution of the United States, which provides that 'no State shall deprive any person of life, liberty, or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.'"

9th. The learned court erred in finding the following conclusion of law: "I am of opinion that by the provisions of the first and fourth sections of the act of 1885 an unlawful discrimination is made between bonds and mortgages and other evidences of debt issued by individuals and those issued by corporations of the State of Pennsylvania, to the disadvantage of the holders of bonds and mortgages issued by corporations as stated, by subjecting the holders of their securities to an unequal share of the public burdens, and to that extent depriving them of equal protection of the laws guaranteed by the fourteenth amendment to the Constitution of the United States. This discrimination also operates unfairly to the disadvantage of Pennsylvania corporations in that it effects the market value of their securities by imposing on them a burden of taxation greater than that imposed on smaller securities issued by individuals and foreign corporations. Bonds and mortgages and evidences of debt issued by individuals and foreign corporations are subject to one rule of assessment and taxation, viz., at their actual value, while in the case of those issued by corporations of Pennsylvania another rule is prescribed, viz., their nominal value."

142 10. The learned court erred in finding, as a conclusion of law, that "the defendant was consequently not authorized or protected by said act in deducting a tax of three mills from the nominal value of the plaintiff's bonds and the plaintiff is entitled to recover the full amount of his claim, to wit, the sum of six hundred dollars, and judgment must be accordingly entered in favor of the plaintiff and against the defendant for the sum of six hundred dollars in accordance with the provisions of the second section of the act of April 22nd, 1874."

S. P. WOLVERTON,
Counsel for Def't.

Endorsement: No. 25. Feb'y term, 1888. W. W. Jennings *vs.* The Coal Ridge Improvement and Coal Co. Exceptions to findings and conclusions of the court. Filed Feb. 15, 1888. H. F. Mann, prothonotary. S. P. Wolverton, att'y for def't.

And now, Feb'y 21st, 1888, exceptions overruled, and it is ordered that judgment be entered in favor of the plaintiff, W. W. Jennings, and against the defendant, The Coal Ridge Improvement and Coal Company, for the sum of six hundred dollars.

By the court:

C. A. MAYER,
P. J. of the 25th Judicial District.

Copy of Certificate of Prothonotary.

143 NORTHUMBERLAND COUNTY, *ss:*

I, H. F. Mann, prothonotary of the court of common pleas in and for said county of Northumberland, in the Commonwealth [SEAL.] of Pennsylvania, do hereby certify that the above and foregoing writing is a true, correct copy and transcript of the proceedings had in the case wherein W. W. Jennings is plaintiff and The Coal Ridge Improvement and Coal Company is defendant, at No. 25, February term, 1888, and that the accompanying papers are those filed of record in said case so full and entire as the same remains of record and among the files of said office.

Witness my hand and the seal of said court, at Sunbury, Pa., this 28th day of February, A. D. 1888.

S. P. FANSOLD,
Deputy Prothonotary.

Copy of Writ of Error.

EASTERN DISTRICT OF PENNSYLVANIA, *sct:*

The Commonwealth of Pennsylvania to the justices of the common pleas court for the county of Northumberland, Greeting:

Because in the record and process and in rendering the judgment in a certain plaint which was in our said court, before the [SEAL.] judges of the same court, by our writ, between The Coal Ridge Improvement and Coal Company, plaintiff in error,

144 and W. W. Jennings, defendant in error, as it is said, manifest error hath intervened, to the great damage of the said plaintiff in error, as by complaint of the said plaintiff in error we have received information, we, willing that if any error be therein it should be corrected, and that speedy justice be done to the parties in this part, do command you that if judgment, as it is said, be rendered in the said plea, then the record and process and all things touching the same, under your seals, distinctly and openly, you have before the justices of our supreme court of Pennsylvania at a supreme court to be held at Philadelphia, in and for the eastern district of said Commonwealth, on the third Monday of May next (being the last Mon. of the term), and this writ, that, the record and process aforesaid being inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the Honorable Isaac G. Gordon, doctor of laws, chief justice of our said supreme court, at Philadelphia, the 24th day of February, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Commonwealth the one hundred and twelfth.

CHAS. S. GREENE,
Prothonotary.

Endorsement: I certify that the Coal Ridge Imp. & Coal Co. and the Real Estate Trust Company are bail in error in the within case in the sum of fifteen hundred ($1,500) dollars. Chas. S.
145 Greene, prothonotary. 25. Feb'y T., '88. No. 364. January term, 1888. Supreme court. The Coal Ridge Improvement and Coal Company, plaintiff in error, *vs.* W. W. Jennings, defendant in error. Writ of error to the court of common pleas for the county of Northumberland. Returnable the third Monday of May, 1888. Rule on the defendant in error to appear and plead on the return day of the writ. Filed February 25, 1888. Filed in supreme court —— —, 188–. Filed in supreme court May 21, 1888. S. P. Wolverton.

To the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the eastern district:

The record and process and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

WM. M. ROCKEFELLER, *P. J.* [L. S.]
—— ——. [L. S.]

Copy of Specifications of Error.

First. The learned court erred in affirming the plaintiff's second point, thereby finding as a conclusion of law that the only tax to which the bonds and mortgages are made subject by the act of June 30, 1885, is an annual tax upon the actual value thereof, and before any tax can be lawfully due upon any bond or mortgage there must

be a legal assessment or ascertainment of its actual value, with
146 notice to the owner and the right of appeal, and that, there having been no such assessment of the plaintiff's bonds, no tax was due December 1, 1887, and that the defendant company were not lawfully authorized to withhold any portion of the interest due by the terms of the bonds and mortgage securing them.

Which point and answer are as follows:

2. The only tax to which bonds and mortgages are made subject by the act of June 30th, 1885, is an annual tax upon the actual value thereof, and before any tax can be lawfully due upon any bond or mortgage there must be a legal assessment or ascertainment of its actual value, with notice to the owner and right of appeal. There having been no such assessment of the plaintiff's bonds, no tax was due December 1, 1887, and the defendant company was therefore not lawfully authorized to withhold any portion of the interest due by the terms of the bonds and mortgage securing them.

Answer of the court: Affirmed.

Second. The learned court erred in affirming the plaintiff's third point, thereby finding as a conclusion of law that the act of June 30, 1885, is in violation of section first, article IX, of the constitution of Pennsylvania, which requires that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the same."

Which point and answer are as follows:

3. The first section of the act of June 30th, 1885, rendered all mortgages, bonds, &c., taxable at three mills on their actual value. Mortgages issued by individuals and mortgages issued by corporations not doing business in Pennsylvania, but owned by resi-
147 dents of Pennsylvania, are assessed under the general laws of the Commonwealth at their actual value, with notice to the owner of the property and the right of appeal; but by the fourth section of the act of 1885 bonds and mortgages issued by corporations of the State of Pennsylvania, including those owned by the plaintiff, are required to be assessed arbitrarily at their nominal or par value, with no notice to the holder and no right of appeal. This discrimination in the mode of assessment of different subjects of the same class is in violation of section 1 of article IX of the constitution of Pennsylvania, which requires that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the same."

Answer of the court: Affirmed.

Third. The learned court erred in affirming plaintiff's fourth point, thereby finding as a conclusion of law that the fourth section of the act of 1885 is in conflict with section first, article IX, of the constitution of Pennsylvania.

Which point and answer are as follows:

4. By the fourth section of the act of 1885 all bonds and mortgages issued by corporations of the State of Pennsylvania are required to be assessed and taxed arbitrarily upon their nominal value, without notice to the owner or the right of appeal. By reason of such arbitrary assessment the mortgage bonds owned by

plaintiff, whose actual value is at least twenty-five per cent. below their nominal value, as well as all other bonds issued by corporations of Pennsylvania and whose actual value is less than their nominal value, are required to pay the same tax as other bonds issued by corporations of Pennsylvania whose actual value is
148 much above their nominal or par value, in some instances being nearly double the actual value of defendant's bonds. By reason of its requiring such arbitrary assessment the act is in conflict with section one of article IX of the constitution of Pennsylvania, which requires that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the same."

Answer of the court: Affirmed.

Fourth. The learned court erred in affirming the plaintiff's fifth point, thereby finding as a conclusion of law that the fourth section of the act of June 30, 1885, is in conflict with section first, article XIV, of the amendment- to the Constitution of the United States.

Which point and answer are as follows:

5. By the first section of the act of 1885 all bonds, mortgages, &c., owned by residents of Pennsylvania are made taxable at three mills upon their actual value. Under the general laws of the Commonwealth all such property is to be assessed at its actual value, with notice to the owner and the right of appeal to the county commissioners, whose action is in turn reviewed by the State board of revenue commissioners, except as to bonds and mortgages issued by corporations created by or doing business in Pennsylvania, which are — the provisions of the fourth section of the said act drawn out from the general plan of assessment and required to be assessed arbitrarily at their nominal or par value. By reason of the discrimination thus made between the assessment of mortgages issued by corporations of the State of Pennsylvania and those issued by individuals and foreign corporations, and by reason of the arbitrary assessment of bonds and mortgages issued by Pennsylvania
149 corporations whose actual value is less than their nominal or par value, as in the case of plaintiff, at the same price as other bonds issued by Pennsylvania corporations whose actual value is much greater than their nominal or par value, the said fourth section is in conflict with section one of article XIV of the amendments to the Constitution of the United States, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws."

Answer of the court: Affirmed.

Fifth. The court erred in affirming the plaintiff's sixth point, thereby finding as a conclusion of law that the act of June 30, 1885, is in violation of section ninth, article I, of the constitution of Pennsylvania.

Which point and answer are as follows:

6. For the reasons stated in point 3 the act of 1885 is in viola-

tion of section 9 of article I of the constitution of Pennsylvania, which provides that no person shall be deprived of his life, liberty, or property unless by the judgment of his peers or the law of the land.

Answer of the court: Affirmed.

Sixth. The learned court erred in affirming the plaintiff's seventh point, thereby finding as a conclusion of law that the said act is in conflict with the provisions of article V of the amendment to the Constitution of the United States.

Which point and answer are as follows:

150 7. For the reasons stated in point No. 5 the act of 1885 is also in conflict with the provisions of article V of the amendments to the Constitution of the United States, which provides that "no person shall be * * * deprived of life, liberty, or property without due process of law."

Answer of the court: Affirmed.

Seventh. The learned court erred in deciding as a conclusion of law that the fourth section of the act of June 30, 1885, is violative of article IX of the constitution of Pennsylvania, which requires "that all taxes shall be uniform upon the same classes of subjects within the territorial limits of the authority levying the same."

Eighth. The learned court erred in finding as a conclusion of law that the fourth section of the act of 1885 is in conflict with that portion of the constitution of Pennsylvania which declares that "No person shall be deprived of life, liberty, and property unless by judgment of his peers or the law of the land," and the fourteenth amendment to the Constitution of the United States, which provides that "no State shall deprive any person of life, liberty, or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws."

Ninth. The learned court erred in finding the following conclusion of law: "I am of opinion that by the provisions of the first and fourth sections of the act of 1885 an unlawful discrimination is made between bonds and mortgages and other evidences of debt issued *due* by individuals and those issued by corporations of the

151 State of Pennsylvania, to the disadvantage of the holders of bonds and mortgages issued by corporations, as stated, by subjecting the holders of their securities to an unequal share of the public burdens and to that extent depriving them of equal protection of the laws, guaranteed by the fourteenth amendment to the Constitution of the United States. This discrimination also operates unfairly to the disadvantage of Pennsylvania corporations, in that it affects the market value of their securities by imposing on them a burden of taxation greater than that imposed on smaller securities issued by individuals and foreign corporations. Bonds and mortgages and evidences of debt issued by individuals and foreign corporations are subject to one rule of assessment and taxation, viz., at their actual value, while in the case of those issued by corporations of Pennsylvania another rule is prescribed, viz., their nominal value."

Tenth. The learned court erred in finding as a conclusion of law that "the defendant was, consequently, not authorized or protected

by said act in deducting a tax of three mills from the nominal value of plaintiff's bonds, and the plaintiff is entitled to recover the full amount of his claim, to wit, the sum of six hundred dollars, and judgment must be accordingly entered in favor of the plaintiff and against the defendant for the sum of six hundred dollars, in accordance with the provisions of the second section of the act of April 23rd, 1874."

Eleventh. The learned court erred in overruling the defendant's exceptions and entering judgment in favor of the plaintiff.

And now, February 21, 1888, exceptions overruled, and it is ordered that a judgment be entered in favor of the plaintiff,
152 W. W. Jennings, and against the defendant, The Coal Ridge Improvement and Coal Company, for the sum of six hundred dollars.

By the court:

——— ———.

Endorsement: 25. Feb'y T., '88. No. 364. January term, 1888. The Coal Ridge Imp't & Coal Co., pl'ff in error, *vs.* W. W. Jennings, def't in error. Specifications of error. Filed in supreme court May 21, 1888.

Copy of Opinion.

COAL RIDGE IMPROVEMENT AND COAL COMPANY *vs.* W. W. JENNINGS.	E. D. Error to C. P. of Northumberland.

Filed June 28th, 1889.

Per Curiam:

The question presented by this record has been so recently considered and discussed that any further comments are unnecessary. See cases of Com. *vs.* Delaware Division Canal Company, Com. *vs.* Lake Shore & Michigan Southern Railway Company, Com. *vs.* City of Chester, and Com. *vs.* Bell's Gap Railroad Company. These cases were so recently decided that they have not yet appeared in our State reports, but see 23 W. N. C., 216.

Judgment reversed, and judgment is now entered for $570 and costs.

153 *Copy of Certificate of Opinion.*

I do hereby certify that the above and foregoing is a full, true, and accurate copy of the opinion delivered in the above-entitled cause in the supreme court of Pennsylvania, eastern district, and filed in the office of the prothonotary of said court.

In testimony whereof witness my hand and the seal of said court this 10th day of September, A. D. 1889.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

Endorsement of opinion: E. D. 5-27. Coal Ridge Improvement & Coal Co. *vs.* W. W. Jennings. Error to C. P. of Northumberland. Reversed. Px. Filed in sup. ct. June 28, 1889.

STATE OF PENNSYLVANIA, } ss:
Eastern District, }

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania, in and for the eastern district, do hereby certify that the above and foregoing is a true copy of the record in the above case so full and entire as filed of record in said court.

Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Philadelphia, this tenth day of September, one thousand eight hundred and eighty-nine.

CHAS. S. GREENE,
Prothonotary.

154 I, Edward M. Paxson, chief justice of the supreme court of Pennsylvania, do hereby certify that Charles S. Greene was at the time of signing the annexed attestation and now is prothonotary of the said supreme court of Pennsylvania in and for the eastern district, to whose acts as such full faith and credit are and ought to be given, and that the said attestation is in due form.

In witness whereof I have hereunto subscribed my name this 10th day of September, one thousand eight hundred and eighty-nine.

EDWARD M. PAXSON.

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do certify that the Honorable Edward M. Paxson, by whom the foregoing certificate was made and given, was at the time of making and giving the same and is now chief justice of the supreme court of Pennsylvania, to whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere, and that his signature thereto subscribed is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court of Pennsylvania in and for the eastern district, at Philadelphia, this 10th day of September, one thousand eight hundred and eighty-nine.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

155 In the Supreme Court of the United States.

W. W. JENNINGS
vs.
COAL RIDGE IMPROVEMENT & COAL COMPANY. } No. 1242. October Term, 1889.

Surwrit of error by W. W. Jennings to the supreme court of Pennsylvania.

Assignments of Error.

1. The learned court erred in not sustaining the second point submitted by W. W. Jennings; which point was as follows:

"The only tax to which bonds and mortgages are made subject by the act of June 30, 1885, is an annual tax upon the actual value thereof, and before any tax can be lawfully due upon any bond or mortgage there must be a legal assessment or ascertainment of its actual value, with notice to the owner and the right of appeal. There having been no such assessment of the plaintiff's bonds, no tax was due December 1, 1887, and the defendant company was therefore not lawfully authorized to withhold any portion of the interest due by the terms of the bonds and the mortgage securing them.

2. The learned court erred in not sustaining the fifth point submitted by W. W. Jennings; which point was as follows:

"By the first section of the act of 1885 all bonds, mortgages, &c., owned by residents of Pennsylvania are made taxable at three mills upon their actual value. Under the general laws of the Commonwealth all such property is to be assessed at its actual value, with notice to the owner and the right of appeal to the county commissioners, whose action is in turn reviewed by the State board of revenue commissioners, except as to bonds and mortgages issued by corporations created by or doing business in Pennsylvania, which are
156 by the provisions of the fourth section of the said act drawn out from the general plan of assessment and required to be assessed arbitrarily at their nominal or par value. By reason of the discrimination thus made between the assessment of mortgages issued by corporations of the State of Pennsylvania and those issued by individuals and foreign corporations, and by reason of the arbitrary assessment of bonds and mortgages issued by Pennsylvania corporations whose actual value is less than their nominal or par value, as in the case of plaintiff, at the same price as other bonds issued by Pennsylvania corporations whose actual value is much greater than their nominal or par value, the said fourth section is in conflict with section one of article XIV of the amendments to the Constitution of the United States, which provides that 'no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'"

3. The learned court erred in not sustaining the seventh point submitted by W. W. Jennings; which point was as follows:

"For the reasons stated in point No. 5 the act of 1885 is also in conflict with the provisions of article V of the amendments to the Constitution of the United States, which provides that 'no person shall be * * * deprived of life, liberty, or property without due process of law.'"

4. The learned court erred in not sustaining the ninth point submitted by W. W. Jennings; which point was as follows:

"As there had been no lawful assessment of plaintiff's bonds and — was no tax thereon due to the Commonwealth of Pennsylvania upon the first day of December, 1887, the act of June 30, 1885, if it required the treasurer of the corporation defendant to retain or withhold any sum whatsoever from the said interest, is void, because in
conflict with section 10 of article I of the Constitution of the
157 United States, which forbids the States to pass any law impairing the obligation of contracts."

5. The learned court erred in reversing the judgment of the court of common pleas of Northumberland county in favor of W. W. Jennings, which was for $600, and reducing the same to $579 by deducting therefrom $30 as tax.

6. The learned court erred in not entering judgment in favor of W. W. Jennings and against the Coal Ridge Improvement & Coal Company for the whole amount of said W. W. Jennings' claim of $600, as allowed by the court of common pleas of Northumberland county.

To the honorable the judges of the Supreme Court of the United States of America:

Your petitioner prays for a reversal of the judgment entered in the supreme court of Pennsylvania for the reasons assigned above.

W. W. JENNINGS,
By his attorney, M. E. OLMSTED.

158 [Endorsed:] In U. S. Supreme Court. No. 1242. October term, 1889. W. W. Jennings (plaintiff in error) *vs.* Coal Ridge Improvement & Coal Co. (defendant in error). Assignments of error. M. E. Olmsted.

[Stamped:] Office Supreme Court U. S. Filed Sep. 24, 1889. James H. McKenney, clerk.

Endorsed on cover: Case No. 13,649. Pennsylvania supreme court. No. 427. W. W. Jennings, plaintiff in error, *vs.* The Coal Ridge Improvement and Coal Company. Filed September 24, 1889.

147 U.S. 147

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JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

No. 98, OCTOBER TERM, 1892.

W. W. Jennings,
Plaintiff in Error,

vs.

Commonwealth of Pennsylvania.

Brief of Plaintiff in Error.

M. E. OLMSTED,
Attorney for Plaintiff in Error.

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IN THE

Supreme Court of the United States.

No. 98, OCTOBER TERM, 1892.

W. W. JENNINGS,
Plaintiff in Error,

vs.

COAL RIDGE IMPROVEMENT AND COAL COMPANY.

I.
STATEMENT OF THE CASE.

W. W. Jennings is the owner of $20,000 of the registered mortgage bonds of the Coal Ridge Improvement and Coal Company, a Pennsylvania corporation, upon which, bonds by the terms thereof, there was due him on the first day of December, 1887, six months interest amounting to $600. The total issue of bonds secured by the mortgage is $200,000. The company being financially embarrassed was not in funds to pay the interest maturing December 1, 1887. It made an arrangement with most of its bondholders for an extension of two years. Jennings was asked to agree to this arrangement, but refused, threatening foreclosure unless the interest due him were fully and promptly paid. The company thereupon tendered him $570, being the interest due, less $30, which the treasurer of the company proposed to deduct for State tax alleged to be due, at the rate of three mills per annum upon

the nominal or par value of the bond. Jennings agreed to submit to the deduction of a tax based upon the actual value of the bonds, which did not exceed 75 per centum of par, but the treasurer of the company insisting that he was compelled by law to assess them at par, regardless of actual value, refused to make any concession.

Jennings refused to accept the $570, and brought suit for his full interest. For many years the State of Pennsylvania collected a tax upon all mortgages, etc., at the rate of three mills per annum upon each dollar of the value thereof annually, such property being assessed in the hands of the holders by local assessors sworn to appraise each article or piece thereof at the rate or price which "the same would sell for if sold singly and separately at a *bona fide* sale, after full public notice." Notice of the assessment was required to be given to the owners of the property assessed, who were allowed an appeal from the assessment to the County Commissioners, who might raise or lower it. The statute of June 7, 1879, (P. L. 112), which provided a general system for State taxation of corporations and of personal property, in its 17th section made all mortgages, etc., taxable "at the rate of four mills on every dollar of the value thereof annually," and provided that "all corporations paying interest on loans . . . . shall deduct said tax from said interest and pay the same into the State Treasury." The statute did not authorize the corporations to appraise the bonds, nor provide for any return to them of appraisement made by the local assessors. A supplement approved June 10, 1881, re-enacted the tax in the same language, with additional provisions requiring treasurers of corporations to return to the Auditor General the *amount of indebtedness, &c.* The Supreme Court of Pennsylvania, in *Com.* vs. *Lehigh Valley R. R. Co., 104 Pa., 89*, declared that as the tax was upon actual value an *assessment* was necessary, and as no machinery was provided for the ascertainment of value, the provisions of both acts as to the deduction of the tax from the interest was invalid and inoperative, and such property was required to be assessed as theretofore by the local assessors. Thereupon there was enacted the statute of June 30, 1885, (P. L. 193), being also a supplement

to the act of 1879, wherein all mortgages, &c., are declared to be "taxable for State purposes at the rate of three mills on the dollar of the value thereof annually," the language being the same as in the former acts, except as to the rate, which is reduced one mill.

To comply with the ruling of the Supreme Court as to the necessity of an ascertainment of value, the 4th section of this act makes it the duty of the treasurer of each private corporation doing business in the State, "upon the payment of any interest on any scrip, bond or certificate of indebtedness issued by said corporation, to *assess* the tax imposed and provided for State purposes upon the nominal value of each and every said evidence of debt," deduct the same from the interest paid and turn it into the State treasury. All other bonds, mortgages or certificates are left to be assessed by the local assessors as theretofore, so that while *all* are made taxable in one general class at their actual value, some of the class, viz: bonds or mortgages issued by corporations not doing business in Pennsylvania and bonds or mortages issued by individuals are assessed at the actual value for which they would *bona fide* sell, with notice to the owner and the right of appeal, but bonds issued by corporations doing business in Pennsylvania are required to be assessed arbitrarily at their nominal value, with no right of appeal. It was on the supposed authority of this supplement of 1885 that the Coal Ridge Company insisted upon assessing the bonds owned by Jennings at their par value, which was at least 33⅓ per cent. in excess of their actual value. Suit to recover full interest was brought by Jennings in the court of common pleas of Northumberland county. The case was tried, by agreement, without a jury, the court finding both the law and the facts in accordance with the Pennsyluania statute of April 22, 1874, (P. L. 109). The court found as facts that the actual value of the Coal Ridge bonds was not greater that three-fourths of their par value; that the actual value of corporate securities held by individuals differs from their nominal or par value. The evidence showed and the court found as a fact that there are many millions of dollars of corporate bonds issued by cor-

porations not doing business in Pennsylvania, but owned by residents of Pennsylvania, the actual value of many of which was below their par value. The corporations which issued these bonds are not subject to the provisions of the fourth section of the act of 1885. The bonds themselves, as well as those issued by individuals, were left to be assessed by the local assessors at their actual value, and the court also found as a fact that they, as well as bonds and mortgages issued by individuals, were in reality assessed at their actual value. It was also found as a fact that securities issued by corporations subject to the fourth section of the act of 1885 differed in actual value, which in some cases was below and in others above their nominal or par value. The evidence also showed that some interest bearing bonds issued by foreign corporations, but owned in Pennsylvania, were appraised at twenty-five per cent. or more below par, the tax being three mills only on their actual value, while in the case of the Coal Ridge bonds the tax at three mills on their par value amounted to four mills on their actual value: also that many bonds issued by Pennsylvania corporations sold at forty per cent. or more above par, the tax at three mills on their par value, therefore, amounting to but little more than two mills upon their actual value. In consideration of these facts, the court sustained, *inter alia*, the following point, viz:

"By the first section of the act of 1885 all bonds, mortgages, &c., owned by residents of Pennsylvania are made taxable at three mills upon their actual value. Under the general laws of the Commonwealth all such property is to be assessed at its actual value, with notice to the owner and the right of appeal to the County Commissioners, whose action is in turn reviewed by the State Board of Revenue Commissioners, except as to bonds and mortgages issued by corporations created by or doing business in Pennsylvania, which are, by the provisions of the fourth section of the said act, drawn out from the general plan of assessment, and required to be assessed arbitrarily at their nominal or par value. By reason of the discrimination thus made between the assessment of mortgages issued by corporations of the State of Pennsylvania and those issued by individuals and foreign corporations, and by reason of the arbitrary assessment of bonds and mortgages issued by Pennsylvania corporations, whose actual value is

less than their nominal or par value, as in the case of plaintiff, at the same price as other bonds issued by Pennsylvania corporations, whose actual value is much greater than their nominal or par value, the said fourth section is in conflict with section 1, of Article XIV of the Amendments to the Constitution of the United States, which provides that 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'"

The decision of the trial court being in favor of Jennings, the Coal Ridge Company carried the case to the Supreme Court of Pennsylvania, assigning as error the affirmance of the above and other points by the trial court. The Supreme Court of Pennsylvania reversed the ruling of the trial court and, allowing the tax, reduced the judgment to $570, to correct which action this writ of error was taken.

———o———

ASSIGNMENT OF ERRORS.

1. The learned Court erred in not sustaining the second point submitted by W. W. Jennings which point was as follows :

"The only tax to which bonds and mortgages are made subject by the act of June 30, 1885, is an annual tax upon the actual value thereof, and before any tax can be lawfully due upon any bond or mortgage there must be a legal assessment or ascertainment of its actual value, with notice to the owner and the right of appeal. There having been no such assessment of the plaintiff's bonds, no tax was due December 1, 1887, and the defendant company was therefore not lawfully authorized to withhold any portion of the interest due by the terms of the bonds and the mortgage securing them."

2. The learned Court erred in not sustaining the fifth point submitted by W. W. Jennings, which point was as follows :

"By the first section of the act of 1885 all bonds, mortgages, &c., owned by residents of Pennsylvania are made taxable at three mills upon their actual value. Under the general laws of the Commonwealth all such property is to be assesed at its actual value, with notice to the owner and the right of appeal to the County Commissioners, whose action is in turn reviewed by the State Board of Revenue Commissioners, except as to bonds and mortgages issued by corporations created by or doing business in Pennsylvania, which are by the provisions of the fourth section of the said act drawn out from the general plan of assessment and required to be assessed arbitrarily at their nominal or par value. By reason of the discrimination thus made between the assessment of mortgages issued by corporations of the State of Pennsylvania and those issued by individuals and foreign corporations, and by reason of the arbitrary assessment of bonds and mortages issued by Pennsylvania corporations whose actual value is less than their nominal or par value, as in the case of plaintiff, at the same price as other bonds issued by Pennsylvania corporations whose actual value is much greater than their nominal or par value, the said fourth section is in conflict with section one of Article XIV of the Amendments to the Constitution of the United States, which provides that 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'"

3. The learned Court erred in not sustaining the seventh point submitted by W. W. Jennings, which point was as follows:

"For the reasons stated in point No. 5, the act of 1885 is also in conflict with the provisions of Article V of the Amendments to the Constitution of the United States which provides that 'No person shall be . . . . deprived of life, liberty or property without due process of law.'"

4. The learned Court erred in not sustaining the ninth point submitted by W. W. Jennings, which point was as follows:

"As there had been no lawful assessment of plaintiff's bonds and no tax was thereon due to the Commonwealth of Pennsyl-

vania upon the first day of December, 1887, the act of June 30, 1885, if it required the treasurer of the corporation defendant to retain or withhold any sum whatsoever from the said interest, is void, because in conflict with section 10 of Article I of the Constitution of the United States, which forbids the States to pass any law impairing the obligation of contracts."

5. The learned Court erred in reversing the judgment of the court of common pleas of Northumberland county in favor of W. W. Jennings, which was for $600 and reducing the same to $570 by deducting therefrom $30 as tax.

6. The learned court erred in not entering judgment in favor of W. W. Jennings and against the Coal Ridge Improvement & Coal Company for the whole amount of said W. W. Jennings' claim of $600, as allowed by the court of common pleas of Northumberland county.

ARGUMENT.

The fundamental or absolute rights of individuals are classified by Blackstone under three heads, to wit: The right of personal security, the right of personal liberty, and the right of private property. Concerning the last, he says, "The third absolute right inherent in every Englishman is that of property, which consists in the free use, enjoyment and disposal of all his acquisitions without any control or diminution save only by the laws of the land." The declaration of Independence broadly declares that among the inalienable rights with which all men are endowed by their creator are "life, liberty and the pursuit of happiness." "Rights to life, liberty and the pursuit of happiness are equivalent to the rights of life, liberty and property. These are fundamental rights which can only be taken away by due process of law, and which can only be interfered with, or the enjoyment of which can only be modified, by lawful regulations necessary or proper for the mutual good of all." (Mr. Justice Bradley in *Slaughter House Cases*, 16 Wall., 36–116). Taxation is an incident of sovereignty. It is perhaps the highest incident of sovereignty. It is the virtual confiscation of the property of the individual for the benefit of the public. As stated by Chief Justice Marshall: "The power to tax involves the power to destroy" (*McCulloch* vs. *Maryland, 4 Wheat., 316*). In the same case it was said that all subjects over which the sovereign power of a State extends are in its discretion legitimate subjects of taxation, and this may be carried on to any extent to which the government may choose to carry it; that in its very nature it acknowledges no limits, and the only security against abuse must be found in the responsibility of the legislature which imposes the tax to the constituency who are to pay it. The sovereign power of a State in the taxation of persons and property

within her jurisdiction is unrestrained, save by the limitations of the Federal Constitution; and perhaps so far as the taxation of his property is concerned the only provision to which the citizen can refer as measurably securing to him the inalienable right of property announced in the Declaration of Independence is to be found in the Fourteenth Amendment, which expressly declares that no State shall "deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." As stated by Swayne, C. J., in *Slaughter House Cases*, 16 Wall., 127, "The equal protection of the laws places all upon a footing of legal equality, and gives the same protection to all for the preservation of life, liberty and property and the pursuit of happiness."

This is the equivalent of the declaration of Robertson, C. J., in *Lexington* vs. *MacQuillan's Heirs*, *9 Dana, 513–517*, that "Whenever the property of a citizen shall be taken from him by the sovereign will and appropriated without his consent to the benefit of the public, the exaction should not be considered as a tax unless similar contributions be made by the public itself or shall be exacted, rather, by the same public will from such constituent members of the same community, generally, as own the same kind of property." Humanity is fallible; human government and human laws are imperfect; human judgment is variable and uncertain. While these conditions exist, exact equality of taxation cannot be hoped for nor expected. Neither the Fourteenth Amendment nor any other constitutional provision can be relied upon to produce that result. Such inequalities of burden as arise from differences in judgment of tax assessors, or from the imperfect enforcement of tax statutes, cannot in every case be provided against; but where, as in this case, a statute imposing an *ad valorem* tax upon certain articles of property provides that as to certain of said articles their actual value shall be determined by sworn assessors, with notice to the

owner and the right of appeal, but as to other articles of the same class deprives the owners of the benefit of human judgment, fallible as it is, denies to them any notice or right of appeal, and requires such an arbitrary assessessment of value as inevitably to result in the greatest discrimination and inequality, not only between members of the taxable class assessed by the one method and members of the same class assessed by the other, but also between different members assessed by the same method, so that certain items of property are made to bear, proportionately, twice the burden of other similar articles,—in such a case, the vice being inherent in the statute itself, and the inequality necessarily resulting from its operation, neither the owner nor his property is afforded the equal "protection of the laws." His property is taken without "due process of law," and the protection of the Fourteenth Amendment is properly invoked. No plainer case can be found than the one in hand. If the constitutional provision cited does not cover and protect the plaintiff in error from the unequal burden sought to be placed upon him, from the unjust deprivation of property to which the effort is made to subject him, it will be useless, hereafter, to rely upon that provision as affording any protection whatever in the matter of unjust or unequal taxation, which is by far the most important, and about the only method in which the States are ever likely to infringe upon the absolute rights of individuals in the enjoyment of private property.

The tax in controversy is not a specific, but an *ad valorem* tax. It has been so decided by the Supreme Court of Pennsylvania. It was first imposed by the act of April 29, 1844, (P. L. 497), which by its 32d and 34th sections provided that "All mortgages, money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment," &c., should be taxable annually, at the rate of "three mills on every dollar of the value thereof," such property to be valued and assessed by the local assessors in the manner

hereinafter pointed out. The rate remained the same until the passage of an act entitled "An act to provide revenue by taxation," approved June 7, 1879, (P. L. 112), which, in its 17th section, provided "That all mortgages, money owing by solvent debtors, whether by promissory note, penal or single bill bond or judgment, ... shall be and are hereby made taxable for State purposes at the rate of four mills on every dollar of the value thereof annually . . . . . and all corporations paying interest on loans . . . . . shall deduct the said tax from the said interest and pay the same into the State Treasury."

A supplement to the act of 1879 was passed June 10, 1881, (P. L. 99), which in its first section, re-enacted the tax at the same rate and in precisely the same language, and in its second section enacted as follows:

"That hearafter all corporations paying interest on a loan or loans which are taxable for State purposes, whether secured by bond, mortgage, recognizance or otherwise, shall report annually in the month of November to the Auditor General the amount of such indebtedness owned by residents of this Commonwealth, as nearly as can be ascertained, under oath of the president or treasurer, and shall pay into the State Treasury four mills upon every dollar of such indebtedness so returned and owned by residents as aforesaid, within fifteen days after the thirty-first day of December in each year; and for every failure to report or pay as aforesaid the Auditor General shall add ten per centum as a penalty to the said tax; and the said tax may be deducted by the corporation paying the same from the interest on such indebtedness, whereupon such indebtedness, whether secured by bond, mortgage, judgment or otherwise, shall be exempt from other taxation in the hands of the holders thereof."

The act of 1879 and the supplement of 1881 were both before the Supreme Court of Pennsylvania in *Com.* vs. *Lehigh Valley R. R. Co., 104 Pa., 89*, and were, in so far as they required corporations to deduct the tax, declared to be inoperative and invalid because the tax was upon actual value and there was no machinery provided for the determ-

ination of that actual value by the officers of the corporation. It was there held that corporate bonds must continue to be assessed and taxed as theretofore by the local assessors in the tax districts wherein the owners of the bonds resided, reaching the treasury of the Commonwealth through the machinery provided in such cases, which machinery as well as the ruling of the court is defined in the following extract from the opinion of Mr. Justice Clark :

"The act 29th April, 1844, was the beginning of our present revenue system; that act repealed all laws theretofore passed for levying taxes for State purposes; it designated in great detail the various subjects which should be 'valued and assessed' and 'subject to taxation' for State purposes; among these in the 32d section we find 'mortgages, money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment, also all articles of agreement and accounts bearing interest owned or possessed by any person or persons whatsoever, except notes or bills for work and labor done and bank notes.' By the 34th section of the same act the county commissioners of each county were required annually, at the time of making county rates and levies, to assess these subjects, with many others designated 'for the use of the Commonwealth, three mills on every dollar of the value thereof.'

"By the 17th section of the act of June 7th, 1879, and the 1st section of the act of June 10th, 1881, the same subjects enumerated above in the act of 1844 are merely 'made taxable for State purposes at the rate of four mills on every dollar of the value thereof.' The words of the act of 1879 and of 1881 in the clauses referred to which apportion the subjects of taxation and fix the rate to be imposed are identical and are substantially equivalent to the words of the corresponding clause in the act of 1844, whilst all provide that the rate shall be 'upon every dollar of the value thereof.'

"Thus, therefore, it appears that the things made taxable under the acts of 1879 and 1881 were taxable under the act of 1844, upon the same basis of valuation, for the same purpose; the rate only is different. The phrase, 'every dollar of the value thereof,' has acquired a well-established signification under our revenue system; it means simply the actual value or worth. The 4th section of the act of 15th May, 1841, requires the assessors to value 'all objects

of taxation according to the *actual value thereof*, and at such rates and prices for which the same would separably *bona fide* sell.' The oath of office which is administered to the assessors under the 9th section of the act of 27th July, 1842, obligates that officer to value all taxable property at the rate or price which he shall, 'after due examination and consideration believe the same would sell for if sold singly and separately at a *bona fide* sale, after full public notice.' The 3d section of the act of 15th May, 1841, provides that if any assessor or assistant assessor shall knowingly and intentionally assess, rate or value any property 'at more or less than he shall know and believe the just cash value or the rate thereof,' he shall be guilty of a misdemeanor, &c. It is the duty of the board of revenue commissioners, under section 3d of act of 1878 to ascertain and determine 'the fair and just value of the property of the cities and counties of the Commonwealth made taxable by law, adjusting and equalizing the same as far as possible, so as to make all taxes bear as equally as practicable upon all the property of the Commonwealth made or hereafter to be made taxable, for State purposes *in proportion to its actual value*.'

"The Legislature has thus frequently defined the phrase 'every dollar of the value thereof' to signify actual value, and the construction which is deducible from the continued, general and uniform practice and understanding throughout the Commonwealth is the same. That the same signification was in the legislative mind at the passage of the acts of 1879 and 1881 is made clear by the fact that shares of stock in banks and savings institutions are put in the same class with 'mortgages, money owing by solvent debtors,' &c., are also and in like manner made taxable at the rate of four mills 'upon every dollar of the value thereof,' and that value is defined by the same act to be 'the actual value in the market where located.' It can scarcely be believed that 'the value thereof' thus generally and indiscriminately applied to both corporate and individual loans, to bank shares, agreements and accounts must be construed to have two altogether distinct and different significations when used but in a single connection.

"If therefore this loan is taxable in the hands of resident owners, at its actual value, a legal ascertainment of that value is essential to the assessment of a valid tax. The tax of a citizen is the result of the rate applied to the value

Treasurer." Strictly construed this language would limit the tax to three mills on the interest which, on the $600 due Jennings, would amount to only $1.80, and not to $30, as claimed and allowed by the State courts. The evident intent was to require the treasurer of the corporation to assess and collect the tax imposed by the first section; and this is the construction of the State court. "The fourth section of the act of 1885 only requires the treasurer of the corporation to assess the tax imposed by the first section . . . . . The word 'of' in the 4th section was doubtless intended for 'off.' This is a manifest blunder and cannot be permitted to change the plain meaning of the Legislature." *Com.* vs. *Del. Div. Canal Co., 123 Pa., 594–625.*

"A careful examination and analysis of the provisions of the fourth section of the act of 1885 is necessary to a clear understanding of the purpose of the Legislature. It will be observed that the tax which the treasurer of the corporation is by this section authorized and directed to assess and collect is 'the tax imposed and provided for State purposes;' that is to say, the tax which is imposed and provided by the first section of the same act upon the general class of subjects consisting of mortgages, money owing by solvent debtors, etc., at the rate of three mills on the dollar of the value thereof annually. The effect of the fourth section, as we said in *Commonwealth* v. *Delaware Div. Canal Co., 123 Pa., 594,* was to sub-divide this general class into two particular classes, one embracing the debts of private corporations to be taxed at the rate specified on their nominal value, the other embracing the residue of the general class, except the bonds of municipal corporations to be taxed at the same rate upon their value to be ascertained under the ordinary processes of assessment by the local assessor." *Com.* vs. *Lehigh Valley R. R. Co., 129 Pa., 429–447.*

"We are clearly of opinion therefore that the 'tax imposed and provided for State purposes' is the tax imposed and provided in the first section of the act; that it is a tax for the calendar year, and that the fourth section was intended merely to provide a different method of assessment and collection." *Ibid., p. 449.*

But the tax imposed by the first section, as already shown, is an *ad valorem* tax. To the validity of such a tax an ascertainment of the actual value, with notice to the owner and the right of appeal, is an essential pre-requisite.

"Of the necessity of an assessment no question can be made. Taxes by valuation cannot be apportioned without it. Moreover, it is the first step in the proceedings against individual subjects of taxation, and is the foundation of all which follow it. Without an assessment, they have no support, and are nullities."—*Cooley on Taxation, 259, and cases there cited.*

"All our constitutions require, either in express terms or by necessary implication, that taxes shall be uniform and equal in their operation; and, in other words, that each and every citizen shall pay a tax in proportion to the value of his estate. A periodical listing and valuation of all the property within the jurisdiction of the taxing power is, therefore, absolutely necessary in order to carry into practical effect this constitutional requirement. To hold otherwise would be to pronounce the revenue laws unconstitutional and void, and deprive the citizen of all manner of protection against unjust and offensive taxation."—*Blackwell on Tax Titles, 114–115.*

"It will thus be seen that the listing and valuation of the land is the basis of the assessment of the tax, and that each citizen is interested in the list. By it alone can the legality of the tax be tested. This is his only security against an unjust tax."—*Ibid., 116.*

"It is not only the substratum of the whole series of acts to be performed—the incipient step in the divestiture and acquisition of title, but it would seem that an official valuation, under the sanction of the oath of office, is the only security the tax payer has against illegal taxation."—*Ibid., 120.*

"Assessment lies at the *foundation of taxation* in all its branches."—*Hilliard on Taxation, 290.*

"Assessment is so far an inseparable incident to taxation

that no right of action arises until a legal assessment is made."—*Ibid., 291.*

"If we could discover neither the necessity nor use of this provision of the law, it would not be for us to dispense with it. But many valuable purposes are answered by it. . . . How is a person taxed to show his estate overvalued by the assessors, in comparison with those of his neighbors, if no valuation is made or opened to inspection? How is he to make his appeal to the sessions for the same end when the assessors refuse to do what he thinks just, unless he can show that he is taxed for more property than he possesses, or that what he does possess has been valued too high? To this it may be added that every one taxed has a concern in the whole valuation and assessment, for if they are illegal in any part any one may resist payment of the portion of the tax demanded of him." *Thurston* v. *Little et al., 3 Mass., 432–433.*

"A valid assessment is an essential prerequisite to the lawful exercise of the power of taxation." *Abbott* v. *Lindenbower, 42 Missouri, 168.*

"An assessment of a tax by some proper authority is essential to the validity of a sale of unseated land by the treasurer." *Bratton* v. *Mitchell, 1 W. & S., 310.*

"A county treasurer has no authority or jurisdiction to sell unseated land for non-payment of taxes until the taxes for which it is sold shall have been due and unpaid for one year before the sale. *And no tax is due until it is assessed.*" *Miller* v. *Hale, 2 Casey, 432.*

"As we conceive, *there can be no legal taxation without an assessment or listing of the property in some way or by some authority.* This is a principle that runs through all tax laws, both in this State and all others. . . . . There is neither a listing nor estimating the value of the property in the case under consideration. . . . . We are, therefore, of the opinion that the appellants have made good their case." *Commonwealth* v. *Blair County, 2 Pearson, 416 and 419.*

And see *County of San Mateo* v. *Southern Pacific R. R.*

Company, 13 Federal Reporter, 722; Sutton's Heirs v. *City of Louisville, 5 Dana, 31; People* v. *Mayor, &c., of Brooklyn, 4 Comstock, 426; People* v. *Waterman, 31 California, 412; McReynold et al.* v. *Longenberger et al., 13 P. F. Smith, 7; City of Philadelphia* v. *Mackey, 2 Pearson, 406; Motz et al.* v. *City of Detroit et al., 18 Mich., 485 and 525; People ex rel., Hopkins* v. *Board of Supervision of Kings County, 52 N. Y., 557 and 567; Morton, Bliss & Co.* v. *Attorney General, 4 South Carolina, 453 and 454; State* v. *Township of Redington, 36 New Jersey Law, 70; Exchange Bank of Columbus* v. *Hines, 3 Ohio, 1; Stewart* v. *Palmer, 74 New York, 188–195; Weber* v. *Reinhard, 23 P. F. Smith, 376–377; Commonwealth* v. *Phœnix Iron Company, 242 January T., 1868, in Dauphin County Common Pleas.*

A mere ascertainment of the nominal *value of corporate loans is no assessment of the* actual *value which alone is made taxable by the first section of the act of 1885.*

"*Value*, when applied without qualification to property of any description, necessarily means the price which it will command in market"—*Bronson, J., in Fox* v. *Phelps, 17 Wend. (N. Y. Sup. Ct.), 399.*

"Value, it must be remembered, consists in the estimate, in the opinion of those influencing the market, attachable to certain intrinsic qualities belonging to the article to be valued."

1 Whart. on Evidence, sec. 449. Washington Ice Company v. *Webster, 68 Maine, 463.*

"It was their duty to assess the capital or capital stock of these corporations at its *value*, not its mere nominal amount." *State* v. *Louisiana Savings Bank, &c., 32 La., 1138.*

A statute of the State of New York, using similar language, was held to relate to the actual, not the par, value, Bockes, J., saying:

"It is, as we think, entirely plain that the basis of assessment against the owners of shares of stock of the banks, as certified to us by the Board of Assessors in answer to the writ in this case, is erroneous. The assessments have not been made against the shareholders on the *value* of 'their

shares of stock' as the law requires, but were made as the fact is certified in the return, at par value, without regard to true value, in excess of par. Such basis of assessment was in manifest disregard of the plain directions of the statute." *People* v. *Assessors of Albany City, 2 Hun., 585.*

"Bonds being evidence of a fixed indebtedness, are taxable at their actual value." *People ex. rel. Trowbridge* v. *Com. of Texas, 4 Hun., 595.*

"The commissioners will also be at liberty to inquire into the *value of North Carolina bonds*, which, being evidence of a fixed indebtedness, are taxable at their actual value." *Ibid., 595.*

"*There must be an assessment*, and the officer must determine whether the bond, note, or mortgage is due by a solvent debtor. A mortgage may exist against property of little or no value, and the mortgagor may be insolvent, or not personally bound. Such a claim could not be assessed at its face, but *might be valued at one-half or one-fourth.*" *Opinion of Judge Pearson in Commonwealth* v. *Pœnix Iron Company.*

In tax proceedings "it must be a matter of the utmost importance to the person assessed that he should have some opportunity to be heard before the charge is fully established against him; and . . . . . we should say that notice of proceedings in such cases, and an opportunity for a hearing of some description, were matters of constitutional right."—*Cooley on Taxation, 265–6.*

"Many provisions in our statutes, regulating the imposition of taxes, must be considered directory merely. Some are, doubtless, conditions such as those which are intended to secure an equality of taxation or burdens among the citizens; that is, that the citizen may know for what he is taxed, know his valuation, and have notice of the time and place of appeal."—*Insurance Co.* v. *Yard, 17 Pa. 338.*

In *City of Philadelphia* v. *Miller, 49 Pa., 448,* Agnew, J., said:

"Notice, or at least the means of knowledge, is an essential element of every just proceeding which affects rights of persons or property."

In *Thomas* v. *Gain, 35 Mich., 155,* Cooley, Chief Justice, after citing approvingly the language of Judge Agnew, in *Philadelphia* v. *Miller, supra,* said:

"Parties whose property is to be taken under summary tax proceedings are entitled, as of right, to be heard at some stage of the proceedings before the tax shall become an established charge against them or their property."

A very recent case involving this question is that of *Stewart* v. *Palmer, 74 New York, 186,* in which Mr. Justice Earle says (pp. 182–190):

"I am of the opinion that the Constiution sanctions no law imposing such an assessment without a notice to, and a hearing or an opportunity of a hearing by, the owners of the property to be assessed. It is not enough that the owners may, by chance, have notice, or that they may, as a matter of favor, have a hearing. The law must require a notice to them, and give them a right to a hearing and an opportunity to be heard. It matters not, upon the question of the constitutionality of such law, that the assessment has in fact been fairly apportioned. The constitutionality of a law has been tested, not by what has been done under it, but what may, by its authority, be done. *The Legislature can no more arbitrarily impose an assessment for which property may be taken or sold, than it can render judgment against a person without a hearing.* It is a rule founded on the first principles of natural justice, older than written constitutions, that a citizen shall not be deprived of his life, liberty or property without an opportunity to be heard in defense of his rights, and the constitutional provision that no person shall be deprived of these without due process of law has its foundation in this rule. This provision is the most important guaranty of personal rights to be found in the Federal or State Constitutions. It is a limitation to arbitrary legislation. No citizen shall arbitrarily be deprived of his life, liberty or property. This the Legislature cannot

do nor authorize to be done. 'Due process of law' is not confined to any judicial proceedings, but extends to every case which may deprive a citizen of his life, liberty or property, whether the proceeding be judicial, administrative, or executive in its nature This great guaranty is always and everywhere present to protect the citizen against arbitrary interference with these sacred rights."

In the California case of *Mulligan* v. *Smith, 8 Pacific Coast Law Journal, 499,* the Supreme Court of that State declared a tax act to be void because it provided property owners with no process for a hearing. Said McKee, J.:

"The Legislature has no power to take away any man's property, nor authorize its agents to do so, without first providing for personal notice to be given him, and for a full opportunity of time, place and tribunal to be heard in defense of his rights."

The question involved in *Cooper* v. *Board of Works, 108 English Common Law Reporter, 181,* was similar in character and the decision to the same effect. In that case Byles, J., quotes approvingly the judgment of Mr. Justice Fortescue in Dr. Bently's case, wherein he says:

"The objection for want of notice can never be got over. The laws of God and man both give the party an opportunity to make his own defense, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass judgment upon Adam before he called upon him to make his defense. 'Adam, where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldst not eat?'"

The Political Code of California requires each person to furnish the assessor with a list of his taxable property. An assessment is then to be made by the assessors and passed upon by the board of equalization. A statute passed in 1874, in its ninth section, provides for a "supplemental tax roll," upon which is to be placed after-discovered

property not contained in the general assessment, and such property is to be assessed by the local assessor. For the fiscal year 1880–1 the Pittsburgh Railroad Company made no return of its property, which was, therefore, under the said ninth section of the act of 1874, placed upon the supplemental tax roll and assessed by the assessor of the city and county of San Francisco. The Superior Court of that district sustained the tax, but the Supreme Court reversed the judgment, McKinstry, J., saying:

"But the ninth section of the act of 1874 attempts to provide for an assessment by the assessor of the city and county of San Francisco, which is arbitrary and absolute, without the possibility of equalization by the board of supervisors, as it provides for assessment to be made after the time within which the board can act. *The Legislature has no power thus to deprive the citizen of an opportunity of appearing before the board for the purpose of contesting the amount assessed against him.* The ninth section is violative both of of the Constitution of the State, and of the fourteenth' amendment of the 'Constitution of the United States.', *People* v. *Pittsburgh R. R. Co., 22 Am. & Eng. R. R. Cases 206–207.*

In *Davidson* v. *New Orleans, 96 U. S., 97*, the Supreme Court of the United States decided that a statute requiring that an assessment, before it became effectual, must be submitted to a court of justice, with notice to the owners of the property, all of whom had the right to appear and test the assessment, afforded due process of law within the meaning of the Constitution. In the opinion, Mr. Justice Miller said, (pp. 104–105:)

"Whenever the laws of a State, or by State authority, a tax, assessment, servitude or other burden is imposed upon property for the public use, whether it be for the whole State or of some more limited portion of the community, and those laws provided for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of

the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

But in the present case there is not even a resort to the court permitted. There is no notice whatever to the owner of the property, and no remedy afforded him. The acts of assessment and collection are simultaneous, and are to be made "upon payment of any interest." In the case last cited, Mr. Justice Bradley wrote a separate opinion, in which he said, (p. 107:)

"In the conclusion and general tenor of the opinion just read I concur. But I think it narrows the scope of inquiry as to what is due process of law more than it should do. . . . I think, therefore, we are entitled, under the fourteenth amendment, not only to see that there is some process of law, but 'due process of law,' provided by the State law when a citizen is deprived of his property; and that, in judging what is 'due process of law,' respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or none of these; and if found to be suitable or admissible in the special case it will be adjudged to be 'due process of law;' but if found to be arbitrary, oppressive and unjust it may be declared to be not 'due process of law.'"

In *Dundee Mortgage Trust Investment Company* v. *Parrish*, *24 Fed. Rep., 197*, a motion for an injunction to restrain the collection of a tax was denied because the taxpayer who was seeking equity had failed to do equity by paying what was lawfully due before invoking the aid of the court to protect him from the part which had been illegally assessed. The court declared, however, that part of the assessment was illegal, Deady, J., saying (pp. 203–204):

"The assessment of the plaintiff's mortgages for 1884, in Yamhill county, is made by the sheriff under section 3 of the old territorial act of January 26, 1885, (Laws Or., 769, §98) which authorized that officer to assess and collect a tax on

any property which he might find had been omitted from the assessment roll, there being then no provision in the law for a board of equalization. It is suggested that this section was repealed by the act of October 25, 1870, (Sess. Laws, 52), constituting the county judge, clerk and assessor a board of equalization, and the suggestion is not without force.

"It is also maintained that this section is void under the fourteenth amendment, because it deprives the party affected by the assessment of his property without due process of law, in that it makes the fiat of the sheriff, without notice to the owner, sufficient evidence that his property has been omitted from the assessment roll, and is of a certain value for the purpose of taxation, to which it is thereby made liable without any more to do. Under the rule, carefully laid down by the Supreme Court in *Davidson* v. *New Orleans, 96 U. S., 104*, I think this point is well taken. The listing and valuation of the property is done by the sheriff arbitrarily and without notice to the owner, and there is no provision for correcting his action in either respect, but the collection of the tax follows immediately upon such listing and valuation, and by the sale of the property if necessary. Nor does section 4 of the same act (Laws Or., 769, §99), which authorizes the sheriff, upon application of the party interested, to correct certain errors of the assessor, apply to an assessment made by the sheriff under section 3, nor would it be sufficient to make it due process of law if it did. The party aggrieved would still be without notice of the proceeding until the tax was demanded or the property seized for non-payment thereof."

In *State* v. *Township of Readington, 36 N. J. Law, 70*, the Supreme Court of New Jersey said:

"Taxation operates upon a community, or a class in a community, according to some rule of apportionment. When the amount levied upon individuals is determined without regard to the amount or value exacted from any other individual or classes of individuals, the power exercised is not that of taxation, but of eminent domain. A tax upon the persons or property of A, B and C individually, whether designated by name or in any other way, which is in excess of an equal apportionment among the persons or property of the class of persons or kind of property subject to the taxation, is, to the extent of such excess, the taking of

private property for a public use without compensation. The process is one of confiscation, and not of taxation."

In *County of San Mateo* vs. *Southern Pacific Railroad Company* (*13 Federal Reporter, 722*), the defendant contended that taxes levied against it were invalid and void on two grounds:

(1) "Because the assessment, according to which taxes were levied was made in pursuance of discriminating provisions of the State Constitution in the enforcement of which the property of the company was valued upon a different basis from other property and the company 'was thus subjected to an unjust proportion of the public burdens, and denied the equal protection of the laws guaranteed by the fourteenth amendment to the Federal Constitution.'"

And

(2) "Because the assessment was made in pursuance of provisions of the State Constitution which gave no notice to the company, and afforded it no opportunity to be heard respecting the value of the property, or for the correction of any errors of the board, thus depriving it of its property without due process of law guaranteed by that amendment."

Both of these points were sustained in an able and most exhaustive opinion, by Mr. Justice Field, containing the most thorough discussion of the law upon this subject to be found in any published report, in the course of which he says (p. 733):

"The fourteenth amendment to the Constitution, in declaring that no State shall deny to any person within its jurisdiction the equal protection of the laws, imposes a limitation upon the exercise of all the powers of the State which can touch the individual or his property, including among them that of taxation. Whatever the State may do, it cannot deprive anyone within its jurisdiction of the equal protection of the laws. And by equal protection of the laws is meant equal security under them to every one on similar terms—in his life, his liberty, his property, and in the pur-

suit of happiness. It not only implies the right of each to resort, on the same terms with others, to the courts of the country for the security of his person and property, the prevention and redress of wrongs and the enforcement of contracts, but also his exemption from any greater burdens or charges than such as are equally imposed upon all others ander like circumstances.

"Unequal exactions in every form, or under any pretense, ure absolutely forbidden; and of course unequal taxation, for it is in that form that oppressive burdens are usually laid. It is not possible conceive of equal protection under any system of laws where arbitrary and unequal taxation is permissable, where different persons may be taxed on their property of the same kind, similarly situated, at different rates; where, for instance, one may be taxed at one per cent. on the value of his property, another at two or five per cent., or where one may be thus taxed according to his color, because he is white, or black, or brown, or yellow, or according to any other rule than that of a fixed rate proportionate to the value of his property.

"In the Constitution of several States a provision is found requiring 'equality and uniformity' in the taxation of property, and this is held to mean that taxes must be levied according to some fixed rate or rule of apportionment, so that all persons shall pay the like amount upon similar kinds of property of the same value."

And again (p. 735):

"As the foundation of all just and equal taxation is the assessment of the property taxed—that is the ascertainment of its value—in order that the tax may be levied according to some ratio in the value, uniformity of taxation necessarily requires uniformity in the mode of assessment as well as in the rate of taxation; or, to quote the language of the Supreme Court of Ohio expressing the same thought: 'Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment as well as in the rate of taxation.'"

And again (p. 737):

"It is no answer to this discrimination to say that prop-

erty in the State may be divided into classes, and different rates prescribed for them. Undoubtedly property may be classified for purposes of taxation. Real property may be subjected to one rate of taxation; personal property to another rate. Property in particular districts may be taxed for local purposes, while property elsewhere may be exempt. Taxation on business in the form of licenses may also vary according to the calling or occupation licensed and the extent of business transacted, but even then there must be uniformity of charges with respect to the same calling or occupation in the same locality. It is, however, only with the taxation of property that we are concerned in this case, and the whole object of classifying property is that each class may be subjected to a special rate of taxation. There is no difference in the rate prescribed by the law of the State for the property of railroad corporations, and the rate prescribed for the property of individuals. There is only one rate for all property. There is, therefore, no case presented for the application of the doctrine of classification. The discrimination complained of arises from the different rule adopted in ascertaining the value of the property of railroad corporations as a basis for taxation, not from any different rate of taxation when the value is established. In all taxes upon property, whatever its form or nature, the property is taken as representing a pecuniary value; as standing for so much money invested. The tax is the rate per centum of this pecuniary value. The value being ascertained, the law fixes the rate. The ground of complaint here is that the law requires a higher value to be placed upon the defendant's property than upon the property of individuals similarly incumbered, or rather requires the assessor of the defendant's property, in estimating its value, to disregard and set aside certain elements materially affecting its amount, which are to be considered in estimating the value of the property of individuals. It is not classifying property to make this distinction in determining its value."

And again, (p. 748:)

"*But there is another objection of equal significance, which goes to the validity of the whole assessment. No opportunity was afforded to the defendant to be heard respecting it before the State board of equalization.* It was made by the board upon

the tenth section of Article XIII of the Constitution, which declares that 'the franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this State shall be assessed by the State board of equalization at their actual value, and the same shall be apportioned to the counties, cities and counties, cities, towns, townships and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities and counties, towns, townships, and districts.'

"Other articles of the Constitution, and laws supplementing their directions, provide for the assessment by county officers of all property except 'the franchise, roadway, roadbed, rails and rolling stock' of railroads operated in more than one county, for a hearing by property holders respecting the assessment, and for its equalization by county boards. Ample security is thus afforded to individuals against erroneous and arbitrary assessments. But the assessment of the property mentioned, of railroads operated in more than one county, is placed entirely with the State board."

And again (p. 750–752):

"*There being, then, no provision of law giving to the company notice of the action of the State board, and an opportunity to be heard respecting it, is the assessment valid? Would the taking of the company's property in the enforcement of the tax levied according to the assessment be depriving it of its property without due process of law? It seems to us there can be but one answer to these questions.* There is something repugnant to all notions of justice in the doctrine that any body of men can be clothed with the power of finally determining the value of another's property, according to which it may be taxed, without affording him an opportunity of being heard respecting the correctness of the action. And the injustice is strikingly apparent when the property consists of the great number of particulars which go to make up the taxable estate of a railroad company, requiring for any just estimate of their value accurate knowledge upon a multitude of subjects, not usually possessed, without special study. We cannot assent to any such doctrine. It conflicts with the great principle which lies at the foundation of all just government, that no one shall be deprived of

his life, his liberty or his property without an opportunity of being heard against the proceeding. The principle is as old as *Magna Charta*, and is embodied in all the State Constitutions, and in the fourteenth amendment of the Federal Constitution. The provision in this amendment is in the form of an interdict upon the States—'Nor shall any State deprive any person of life, liberty or property without due process of law.' And by due process is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and it must give to the party to be affected an opportunity of being heard respecting the justice of the judgment sought. Without these conditions entering into the proceeding it would be anything but due process. If it touched life or liberty it would be wanton punishment, or rather wanton cruelty; if it touched property it would be arbitrary exaction. It is signicfiant that the guaranty against the privation of property without due process of law is contained in the clause which guarantees against a like deprivation of life and liberty; and it means that there shall be no proceeding against either without the observance of all the securities applicable to the case recognized by the general law, by those principles which are established in all constitutional governments for the protection of private rights. *Notice is absolutely essential to the validity of the proceeding in any case*; it may be given by personal citation, and in some cases it may be given by statute; but given it must be in some form. If life and liberty are involved, there must be a regular course of judicial proceedings; so, also, where title or possession of property is in contention. But in the taking of property by taxation the proceeding is more summary and stringent. The necessities of revenue for the support of government will not admit of the delays attendant upon judicial proceedings in the courts of justice. The statute fixes the rate of taxation upon the value of the property, and appoints officers to estimate and appraise the value. *Due process of law in the proceeding is deemed to be pursued, when, after the assessment is made by the assessing officers upon such information as they may obtain, the owner is allowed a reasonable opportunity, at a time and place to be designated, to to be heard respecting the correctness of the assessment, and to*

show any errors in the valuation committed by the officers. Notice to him will be deemed sufficient, if the time and place of hearing be designated by statute. But whatever the character of the proceeding, whether judicial or administrative, summary or protracted, and whether it takes property directly or creates a charge or liability which may be the basis of taking it, *the law directing the proceeding must provide for some kind of notice, and offer to the owner an opportunity to be heard or the proceeding will want the essential ingredient of due process of law. Nothing is more clearly established by a weight of authority absolutely overwhelming than that notice and opportunity to be heard are indispensable to the validity of the proceeding.*"

In *Huston* v. *Woodbridge Protection District, 16 Pacific Reporter, 549*, in which the Supreme Court of California overthrew a statute of that State for reasons which are sufficiently expressed in the opinion filed February 14, 1888, by Thornton, J., wherein he says:

"It is argued that the owner of the land assessed has no opportunity under the act to be heard in regard to the assessment, and that on non-payment his land will be sold without any opportunity to be heard as to his charge, which is declared to be a lien on his land, and that he will thus be deprived of his property without due process of law. We think the point well taken. No provision is made anywhere in the statute for any hearing by the land owner whose land is to be charged. No notice is to be given him when the board of trustees is to levy the assessment, and if he appears when such assessment is to be levied by the board of trustees no hearing by the board is provided for in the act. The collection provided for is summary and without suit brought at which the property owner can be heard. The assessment is by the terms of the act made an absolute lien on his property, without any provision or opportunity allowed him to show its illegality or unconstitutionality. For these reasons we are of opinion, according to well-settled rules, that the act is unconstitutional, and the assessment and sale under it cannot be valid."

The statute in question was, to a certain extent, involved in *Bell's Gap R. R. Co.* vs. *Pennsylvania, 134 U. S., 232*, which case was disposed of upon motions to revoke the allocatur,

to quash the writ of error, to dismiss for want of jurisdiction and to affirm the judgment below. The record in that case being very meagre and imperfect, was insufficient to fully inform this court as to the facts or the character of the tax sought to be enforced. It was questioned by the Attorney General whether any federal question was raised by that record. Counsel for Jennings and others filed one or more briefs, not arguing the federal questions, but showing that such were involved and must ultimately be determined, and requesting that there be no disposition of the Bell's Gap Case until oral argument could be heard in others pending. This request, however, was not granted, and the judgment in the Bell's Gap case was affirmed. That the record and printed briefs in that case were insufficient to fully advise this Court as to the controversy is evident from certain important expressions found in the opinion of Mr. Justice Bradley, who said (p. 234): "By the law of Pennsylvania all moneyed securities are subject to an annual State tax of three mills on the dollar of their actual value, except bonds and other securities issued by corporations, which are taxed at three mills on the dollar of the nominal or par value." As already shown, the first section of the act of 1885, which is the only one imposing any tax, makes no exception as to corporate bonds, but makes them and all other moneyed securities taxable in one class, at the rate of three mills annually upon the actual value. The whole difficulty arises out of the different methods of assessment provided for the determination of the actual value. As to some of the securities taxed it is really determined by sworn assessors, with notice to the owner and the right of appeal, while as to others the nominal value is arbitrarily required to be taken as the actual value. And again, the learned Justice said (p. 236): "There is no unjust discrimination against any persons or corporations. The presumption is that corporate securities are worth their face value . . . . . All corporate securities are subject to the same regulations." While

it did not appear in the Bell's Gap case, it does appear in this record, that there is the most unjust discrimination; that corporate securities are not presumptively worth their face value, and that all corporate securities are not, by the act of 1885, made subject to the same regulations. The first section does tax all mortgages owned by residents of Pennsylvania, whether issued by individuals or corporations. The fourth section, however, does not relate to all corporate securities, but only to those issued by corporations doing business in Pennsylvania. Among the facts found by the learned trial judge it is pertinent to consider at this point, the following, to wit (Record p. 86):

"I find as a fact that the actual value of the bonds of the Coal Ridge Improvement and Coal Company is not greater than three-fourths of their par value, and that the interest on the bonds of said company of late years has been paid from the earnings of that portion of this company's property not covered by the mortgage.

"I find also from the evidence that the actual value of corporate securities held by individuals differs from their nominal or par value; in some cases it is below, and in other cases above, par.

"I further find that the securities issued by foreign corporations not doing business in Pennsylvania, and held by residents of Pennsylvania, and those issued by individuals and owned in Pennsylvania, are assessed at their actual value.

"I further find that there are a great many bonds of railway corporations not doing business in Pennsylvania held by residents of Pennsylvania, the actual value of many of which bonds is much below their par value."

In cases tried without a jury, under the act of 1874, the facts found by the court are conclusive and final. *Jamison* vs. *Collins, 83 Pa., 359; Lee* vs. *Keys, 88 Pa., 175; Com.* vs. *Lehigh Valley R. R. Co., 104 Pa., 89–97.*

In any event, the facts thus found by Judge Mayer are fully warranted by the undisputed evidence in the case. The low value of the Coal Ridge bonds is due to the fact that, the coal property covered by the mortgage not being as valuable

as was supposed, doubts exist as to the final payment of the principal, and to other causes. (Record, p. 20–25).

Bonds of coal and iron and other manufacturing companies are not ordinarily as valuable as those of railroad companies, their security being considered more doubtful. (Record pp. 36–44–47).

The witnesess who testified as to the value of corporate securities, and the principles applicable in determining the same were the best that could possibly be obtained upon the subject. Winthrop Smith is a member of both the New York and Philadelphia Stock Exchanges, and senior partner in one of the largest investment houses in Philadelphia. Thomas Cochran was president of one of the largest trust companies, and an active director of perhaps the largest savings institution in America, having over $30,000,000 requiring constant investment and re-investment. George C. Thomas is a member of the firms of Drexel & Co., of Philadelphia, Drexel, Morgan & Co., of New York, and J. S. Morgan & Co., of London, three of the most prominent banking firms in the world. W. W. Jennings, the plaintiff in error, is president of a large trust company, and also of a national bank. The following extracts from their testimony show that the par value of corporate securities is not presumptively their actual value:

From Mr. Smith's Testimony.—"Q. State whether or not in the business in which you are engaged, that of buying and selling securities and dealing in them and investing in them, the nominal or par value of corporate bonds and mortgages is a fair criterion of their actual value?

"A. It is not, sir, because one bond maybe worth 150 and the other may not be worth 50." (Record p. 30).

From Mr. Cochran's Testimony.—"Q. Do you or do you not consider the nominal or par value of the bonds of corporations as a substantial, fair and accurate measure of their actual value?

"A. Oh, no. The nominal value is fixed by the persons that issue them; the actual value is what the public think of them." (P. 42).

"Q. You have stated that your company is a trust company; it frequently acts in the capacity of administrator or executor, does it not?

"A. Oh, yes; in all fiduciary capacities.

"Q. You frequently have occasion to make or cause to be made inventories of the estates of deceased persons?

"A. Oh, yes; millions every year.

"Q. In the case of a decedent leaving a variety of bonds of corporations, would you consider an inventory proper or just which simply returned the par value of those bonds?

"A. No; we wouldn't submit to it, because it is the first proof of our liability; the bonds might be worth fifty per cent. or 130 per cent. on the dollar." (P. 45).

From Mr. Thomas' Testimony.—"Q. I wish you would state, Mr. Thomas, whether or not, in your business, in dealing in such securities in actual life—in actual every day business transactions—you consider the par value of corporate bonds as a substantial or fair and equitable measure of their actual value—nominal or par value—is it a fair indication of their actual value?

"A. No. *The par value of a security has nothing to do with the prices at which it can be bought or sold on the market.* There are so many matters that enter into that, that many securities sell at a very high rate of premium where others would sell at a discount." (P. 46).

"Q. If your firm had learned that a quantity of bonds were for sale in a distant city and you had sent an agent there to examine those bonds and make a return to you of their value, and he returned with simply a list of the securities and a statement of the amount of their par value, would you consider that a substantially accurate ascertainment of the actual value of those securities?

"A. Oh No, sir; *we would not consider that any information whatever,* except as to the amount of the bonds" (p. 50).

And on page 48 he says: "It is very rarely that a bond is quoted exactly at par."

The testimony of Col. Jennings is corroborative of the others.

The security of the principal and the rate of interest are

important elements in determining the value of corporate securities, and there are others more or less important. (Record, pp. 28, 29, 30, 42, 43, 47, 51, 53.)

On the first day of December, 1887, the day on which the interest in question was due Jennings and his bonds were required to be assessed at par, the sales of bonds on the Philadelphia Stock Exchange amounted to $49,000, of which $21,000 sold above par and $28,000 below par, (there being a difference of 38 per cent. between the highest and lowest prices,) and no bonds sold at par. On the same day there were sold on the New York Stock Exchange $766,500, at prices ranging from 33 per cent. above to 75 per cent. below par. $368,000 were sold above par, $391,500 below, and only $7,000 at par (pp. 40, 41).

There are owned in Pennsylvania millions of dollars of bonds issued by foreign corporations not doing business in the State (Record pp. 30, 31, 44, 49).

As these corporations are not doing business in Pennsylvania, the bonds are not assessable at their par value under section 4, but are taxed at their actual value. (See finding of facts by the court, *supra.*) The actual value of many of them is above par, but on the other hand, as to many of them, it is below par, as, for instance, the Texas Pacific Ry, Co., Rio Grande division bonds valued at $75 (p. 31).

Corporate bonds frequently sell below par, although interest is regularly paid, (pp. 31, 32, 33, 45, 49; and see tables pp. 58–82).

Among the Pennsylvania corporations whose bonds sell below par are the Philadelphia & Reading R. R. Co. and the Beech Creek R. R. Co., (p 32); and the Pennsylvania Canal Co., whose bonds sell at 75, although interest is regularly paid (p. 49). The bonds of the Lehigh Valley R. R. Co., a Pennsylvania corporation, sell as high as 142 (p. 62). See how this act of 1885 works: The Rio Grande bonds, worth 75 (and there are millions of them held in Pennsylvania, as

the road was built by Pennsylvania capital, mainly), are assessed at 75, their actual value, as the corporation is not doing business in Pennsylvania. The tax at 3 mills, therefore, amounts to $2.25 on each bond. The bonds owned by Jennings in the Coal Ridge Company, the Pennsylvania Canal Co.'s bonds, and others of the same value, are assessed arbitrarily at par. The tax upon each bond is therefore, $3.00, equal to 4 mills on their actual value, a plain discrimination against the domestic and in favor of the foreign corporate bonds. On the other hand the Lehigh Valley bonds, worth 142, are assessed at par, paying only the same tax as the Coal Ridge bonds, although their actual value is nearly double. The Coal Ridge bonds pay 4 mills on actual value, while the Lehigh Valley bonds pay only a fraction over 2, a most unjust discrimination between domestic bonds. A foreign corporate bond, worth 142, would be assessed at 142, and the tax at 3 mills would be $4.26, while the Lehigh Valley bond of the same value would be taxed only $3.00, a heavy discrimination in favor of domestic bonds. The bonds secured by the $100,000,000 mortgage of the Philadelphia and Reading Railroad Company sell at the present time from 15 to 20 per cent. below par, while many issues of the Lehigh Valley R. R. Co., and Pennsylvania R. R. Co., sell from 40 to 50 per cent. above par. To assess them all at par is a most unwarrantable discrimination, working the greatest injustice. It can hardly be pretended that the holders of Reading bonds receive the equal protection of the law.

It frequently happens that there is discrimination between holders of bonds secured by different mortgages of the same corporation. In *N. Y., L. E. & W. R. R. Co.* vs. *Pennsylvania*, No. 314, on the present docket of this court, the corporation, which is a foreign one, but doing business in Pennsylvania, had issued fifteen different mortgages, securing as many issues of bonds. Evidence was offered in that case from which he trial court found, *inter alia*, the following fact:

"The actual values of the bonds included in the various mortgages range from twenty-five per cent. below par to forty per cent. above par, the first mortgage seven per cent. bonds being worth 122; the second mortgage five per cent. bonds, 114; the third mortgage four and one-half per cent. bonds, 109; the fourth mortgage five per cent. bonds, 113; fifth mortgage seven per cent. bonds, 106; first consolidated mortgage bonds, 133; Buffalo branch bonds, 140; second consolidated six per cent. bonds, 101; funded coupon bonds, 94; and income bonds, 75 cents on the dollar."

As between the Buffalo branch bonds at 140 and the income bonds at 75, there is a difference of 65 per cent. in value, but they are required to be assessed at the same value, par, which is not the real value of any of them. In that case, after considering the voluminous testimony submitted, the court also found as a fact that:

"The nominal or par value of bonds and mortgages issued by corporations is no reliable indication or measure of their actual value, which is usually either above or below, and very seldom the same as their par value, the actual value being dependent upon the value of the property mortgaged, the rate of interest, the date of maturity, and other conditions, some bonds upon which interest is regularly paid selling as low as forty-five cents on the dollar and others as high as one hundred and seventy. In the case of mortgages issued by individuals, which are taxable at their actual value, the actual and par values more nearly agree than in the case of those issued by corporations. There are owned by residents of Pennsylvania millions of dollars worth of bonds and mortgages issued by foreign corporations not doing business in this State, the actual value of some of which bonds is above, and of others below, their nominal or par value."

In *Clearfield Bituminous Coal Corporation* vs. *Pennsylvania*, No. 315 on the present docket of this court, the same learned trial Judge, Simonton, P. J., of Dauphin Common Pleas, found as a fact that:

"Although the interest maturing upon defendant's bonds

during the period embraced in this suit was paid, nevertheless, owing to the financial condition of the company and the doubtfulness as to its being able to continue to pay interest upon so large an indebtedness, which doubts were verified by the fact that it defaulted upon its interest due January 1, 1889, the actual value of the bonds taxed in this suit did not exceed two-thirds of their nominal or par value."

And yet they were required by section 4 to be appraised at par, and pay the same tax as bonds of other corporations of twice their real value.

To the holders of high priced "gilt-edged" securities bearing high rates of interest, this law is a great boon; They escape a large share of the public burdens which they ought to bear. Their bonds are made the more valuable by reason of the lightness of the tax. On the other hand, the holders of bonds bearing low rates of interest, or which by reason of doubts as to the ultimate payment of the principle, or for other reasons, are low in value, are made to pay an unequal and unjust share of the public burdens, and by reason of this fact, their bonds are made still lower in value. In the face of this evidence, and of the facts as officially found by the trial court, it can no longer be insisted that the par value of corporate securities is presumptively their actual value, nor that no injustice is done, nor discriminations made, between persons or corporations; and, as already shown, it is not a fact that all corporate securities are similarly treated.

If the face value of corporate securities were presumptively their actual value, there nevertheless ought to be, in the imposition of an *ad valorem* tax, some place where such presumption might be rebutted. No honest assessor, if given any discretion in the matter, would value the bonds owned by Jennings at par, or if he should, his assessment would be set aside by the County Commissioners. In any method of assessment, irregularities and inequalities will occur. Where they arise from defective human judgment, and not

from the law itself, no constitutional objection is valid, but here human judgment is not even given a chance. The assessors under the fourth section are not permitted to take into consideration the various conditions upon which value depends, but are arbitrarily required to adopt an artificial and arbitrary standard of value, which is grossly imperfect and works the most outrageous inequality conceivable. There is no excuse for it. It is at least as easy to determine the actual value of bonds issued by Pennsylvania corporations as of those issued by foreign corporations or by individuals. In 1887 the State collected $864,355.36 of taxes upon the actual value of the former class with no difficulty whatever, while upon the nominal value of bonds issued by Pennsylvania corporations she collected only $161,059.75 (Auditor General's Report p. 3). There is no more difficulty in determining the value of corporate bonds than of corporate stocks (Record, pp. 33 and 51). For many years Pennsylvania has taxed the stocks of corporations upon appraisements made by the officers of the company, the Auditor General having the right to increase the valuation, and the corporations the right to appeal from his action, the tax thus assessed to be deducted from dividends when paid to shareholders, or if no dividends paid, then to be assessed upon their shares in the manner provided in the 5th section of the act of May 1, 1868 (P. L. 108), which has not been repealed, but remains as part of the tax system applicable to the similar tax imposed by later statutes; Catawissa R. R. Co's. Appeal, 78 Pa., 59. Had the 4th section of the act of 1885 required the treasurers of corporations to assess corporate bonds at their actual instead of their nominal value, there would have been no complaint.

The plan is just as feasible in the case of bonds as in that of stocks; and if this contention is sustained the law will doubtless be amended accordingly. Undoubtedly there may be different agents or instrumentalities for assessing the actual value. It is perfectly competent for the Legisla-

ture to require that as to some bonds they shall be valued by local assessors, and that as to others the treasurers of corporations shall appraise, giving, however, to the owners notice and a hearing at some stage of the proceeding, the tax when finally determined to be deducted from the interest paid. Substantial justice would, in this way, be done. Some inequalities would doubtless arise; nevertheless that would not be the fault of the law. It would be constitutional. The complaint here is not that there are two methods of assessment, but that the one method is an improper one, necessarily resulting in injustice and wrong. This contention involves no controversy with either the decision or the *dicta* in *Hagar* vs. *Reclamation District, 111 U. S., 701.* In that case the statute under discussion did afford an opportunity to the owner to question the validity of the amount of tax assessed against him. Undoubtedly, as stated by Mr. Justice Field in that case, "Of the different kind of taxes which the State may impose there is a vast number which, from their nature, no notice can be given to the tax payer, nor would notice be of any possible advantage to him, such as poll taxes, license taxes (not dependent upon the extent of his business), a general specific tax on things or persons or occupations. In such cases the Legislature, in authorizing the tax, fixes its amount and that is the end of the matter." But this is not that kind of a tax. It is not a specific tax upon bonds, as things. It is, as already shown, an *ad valorem* tax—a tax upon property according to its value—and the necessity of some ascertainment of that value is distinctly recognized in the taxing statute. The Supreme Court of Pennsylvania had, prior to 1885, declared that a legal ascertainment of the actual value was essential to the imposition of such taxes. As to most of the items taxed in the first section a constitutional assessment is provided. The tax is not specifically imposed by the act itself as to any of the items, but some ascertainment of value is necessary. This is recognized even in the 4th section, which appoints the treas-

urers of corporations to be assessors and distinctly commands them to *assess*. This word has a distinct and well-settled meaning in Pennsylvania. It implies an ascertainment of value. The duties of assessors have always been as stated, by Agnew, J., in *Wells* vs. *Smyth, 55 Pa., 159–161*, "to make out and return a perfect list of the names of all the taxables and of the taxable property, together with a *just valuation of the same*, "and "when such *assessment* shall be completed the assessors shall assemble at the commissioners' office to make their return and point out errors."

The application of the rate and apportionment of the tax has always been done by other officers. It has never been considered part of the duties of an assessor, but as decided in the case just cited, "The taxable or his property is assessed when the assessor has returned his list of property *and valuation*, and the commissioners have apportioned the rate per cent. on the various townships."

"If there was any evidence to show that the land had been returned and a *value put upon it* one year prior to the sale, from which the tax could be ascertained by calculation, by reference to the mill rate, for State and county purposes during the years for which the taxes had been paid on the unseated lands, we would sustain the assessment and sale." *Ibid., 163.*

To *assess*, as the word is used in Pennsylvania statutes, is always to ascertain the value. Thus in section 17 of the act of 1879 [see copy of act attached hereto] it is provided that "the shares of stock of such banks or savings institutions shall hereafter be *assessed* as follows: It shall be the duty of the president or cashier of any national bank, banking or savings institution . . . to make report in writing to the Auditor General on or before the first day of March of each year, stating specifically the amount of capital stock and the amount paid in; a full and complete list of the shareholders of such bank or savings institution, with their residence, and the number and par value of shares held by

each person respectively, *value of said stock in the market* where such bank is located . . . The Auditor-General shall have power to adjust such assessments by inquiring into the value of such stock and either abate or increase the value of the same." And see also section 5 of the act of 1885 attached hereto.

The acts of 1879 and 1881 commanded corporate treasurers to deduct the tax, but provided for no valuation. It was to supply the defect found in those acts by the State Court in the Lehigh Valley case that the 4th section of the act of 1885 commanded them also to *assess*.

The vice of it is, that it does not give them any discretion, but commands them to assess at the nominal value, which is to be treated as actual value, with no notice to the bondholder and no right of appeal. It is useless to say that notice would be of no value to them. The fact that it would be of no value is the strongest possible objection to the constitutionality of the section. In the assessment of an *ad valorem* tax there must be afforded such notice and a right to such hearing as will be of advantage to him if his property has been improperly assessed. As stated by Mr. Justice Field in the case of *Hagar* v. *Reclamation District*, *Supra* (p. 710) "But where a tax is levied on property not specifically, but according to its value, to be ascertained by assessors appointed for that purpose upon such evidence as they may obtain, a different principle come sin. The officers, in estimating the value, act judicially, and in most of the States provision is made for the correction of errors committed by them through boards of revision or equalization, sitting at designated periods provided by law to hear complaints respecting the justice of the assessments. The law in prescribing the time when such complaints may be heard gives all the notice required, and the proceeding by which the valuation is determined, though it may be followed, if the tax be not paid, by a sale of the delinquent's property, is due process of law." The fourth section of the act of 1885 appoints assessors who are judical officers. Even the ascertain-

ment of the nominal value is, in a certain sense, a judicial act. If they should improperly declare it, no remedy is given; but the most serious error is in compelling them to treat the nominal value as the actual value. The law, in substance, compels them to make an erroneous valuation, and gives to the owner of the property no remedy. The principles involved in this case are the same as those involved in *Scott* vs. *City of Toledo, 36 Fed. Rep., 385*, in which an assessment of taxes was declared illegal upon grounds thus stated by Jackson, J. (p. 397):

"Nor is it any longer an open question that the provision of the federal constitution prohibiting the States from depriving any person of his property 'without due process of law,' applies to taxation by the State or its subordinate agencies, and that in respect to all such taxation based on values and apportionment, and involving judicial or quasi judicial ascertainment and determination as to the amount to be imposed upon the citizen or made a charge upon his property, 'due process of law' demands and requires that, at some stage in the proceeding before the tax charge or assessment is fixed and made final and collected, he shall have notice or an opportunity to be heard in reference thereto. This subject has been so ably and exhaustively discussed and considered in numerous recent decisions of the Federal and State courts that little or nothing remains to be added; nor is it deemed necessary to extend this opinion by quoting at length from those authorities which establish the general proposition that it is essential to the validity of State taxation other than that of a personal character, such as licenses for privileges or the exercise of franchises, that the tax payer shall at some stage in the proceeding have notice or an opportunity to be heard; that if such notice is not given, or opportunity afforded to be heard, either in levying or collecting the tax, the proceeding will be wanting in that 'due process of law,' which is necessary to give it validity under the Federal Constitution. The Legislature may prescribe the kind of notice and the mode in which it shall be given, 'but it cannot dispense with all notice.' The owner must in some form, in some tribunal, or before some official authorized to correct errors or mistakes, have an opportunity afforded him to be heard in respect to the proceedings under which his

property is to be taken or burdened, before the tax or assessment becomes final and effectual, in order to constitute such procedure 'due process of law.'"

See, also, *Murdock* vs. *City of Cincinnati, 39 Fed. Rep. 891.*

The discrimination complained of here is of the same character as that involved in *People* v. *Weaver, 100 U. S., 539,* in which this court decided, as stated in the syllabus, that:

"The provision in section 5219 of the Revised Statutes of the United States, that State taxation on the shares of any national banking association shall not be at a greater rate than is assessed on other moneyed capital in the hands of individual citizens of the State, has reference to the entire process, and includes the valuation of the shares as well as the rate of percentage charged thereon.

"The statute of a State, therefore, which establishes a mode of assessment by which such shares are valued higher in proportion to their real value than other moneyed capital, is in conflict with that section, although no greater percentage is levied on such valuation than on that of other moneyed capital."

Mr. Justice Miller, delivering the opinion of this court in that case, said, speaking of the Act of Congress upon the subject of taxing national bank shares:

"It was conceived that by this qualification of the power of taxation equality would be secured and injustice prevented" (p. 544).

He also said (p. 545):

"This valuation, then, is part of the assessment of taxes. It is a necessary part of every assessment of taxes which is governed by a ratio or percentage. There can be no rate or percentage without a valuation."

If in the taxation of national bank shares equality can be secured and injustice prevented only by a fair asssessment and valuation, the same is equally true of other moneyed cap-

ital, and if reasonable equality is not secured and injustice measurably prevented, the requirements of the XIV amendment to the Constitution are violated. The discrimination in the assessment of bank shares condemned by this court in the case cited was no greater than the discrimination resulting from the operation of the fourth section of the Pennsylvania statute of 1885.

Furthermore, as bank shares are, by the 17th section of the act of 1879, and the 5th section of the act of 1885, required to be assessed at their actual value, which, in many instances, is three or four times their par value, it is manifest that there is a discrimination between their taxation and that of the corporate bonds which, by the 4th section, are required to be assessed at their nominal value, so that, if the 4th section stands, the tax upon bank shares is illegal.

There is no reason, founded in either necessity or convenience, why this discrimination should continue. As already pointed out, the tax upon the shares of corporations doing business in Pennsylvania (other than banks) is assessed by the officers of the corporations upon the actual value thereof, deducted from dividends and paid into the State Treasury. (See section 5 of the act of 1868, P. L. 105, and section 4 of the act of June 7, 1879, attached hereto.) The tax upon shares thus assessed constitutes the State's largest single source of revenue. The next largest is the tax upon bonds, mortgages, etc., which, not being subject to the provisions of section 4, are assessed at their actual value. And another source of large revenue is that from bank shares assessed at their market value. The bonds issued by corporations doing business in Pennsylvania are even more readily assessed at their actual value than corporate shares. The officers of corporations could as readily assess them at their actual value as at their nominal value, and the tax thus assessed could be as easily and promptly deducted from interest paid, and paid into the State Treasury. A majority of interest bearing bonds sell above par, and the State would,

therefore, probably be the gainer by assessing at their actual value. Assuming that as many bonds sell above par as sell below, she would reach the same result by a fair valuation as by assessing them all arbitrarily at par; but the burden would be equally distributed upon the holders of the bonds, whereas by the present system the unfortunate holders of corporate bonds, the security of which is weakened or impaired, are deprived of the equal protection of the law by being required to bear a portion of the burden which properly belongs upon the fortunate holders of more valuable taxable property.

M. E. OLMSTED,
Attorney for Plaintiff in Error.

NOTE.—Copies of the following are attached hereto:

Penn'a Revenue Act of June 7, 1879.
Penn'a Revenue Act of June 10, 1881.
Penn'a Revenue Act of June 30, 1885.
Opinion of Simonton, Pres't Judge, of the Dauphin County, Pa., Common Pleas, in Com. *v.* Delaware Division Canal Co.
Opinion of Clark, J., of the Pa. Supreme Court, in Com. *v.* Delaware Division Canal Co.

Act of June 7, 1879.

M. E. OLMSTED,

Attorney-at-Law,

HARRISBURG, PA.

Special attention paid to interests affected by the tax laws of Pennsylvania.

AN ACT

To Provide Revenue by Taxation.

AN ACT

To provide revenue by taxation.

Every institution or company doing business in Pennsylvania required to register in auditor general's office.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same*, That hereafter no institution or company, incorporated or organized by or under any law of this commonwealth, general or special, or incorporated or organized under the laws of any other state and doing business in this commonwealth, shall go into operation without first having the name of the institution or company, the date of incorporation or organization, the act of assembly or authority under which incorporated or organized, the place of business, the post office address, and names of the president, secretary and treasurer, the amount of capital authorized by its charter, and the amount of capital paid into the treasury of the company, registered in the office of the auditor general; and every institution or company now engaged in business in this commonwealth shall, within ninety days after the passage of this act, register as herein required in the office of the auditor general; and any such institution or company which shall neglect or refuse to comply with the provisions of this section, shall be subject to a penalty of five hundred dollars, which penalty shall be collected on an account settled by the auditor general and state treasurer, in the same manner as taxes on stock are settled and collected.

Penalty for neglect.

Corporations to make annual report of stock and dividends to auditor general.

SECTION 2. That hereafter, except in the case of banks, savings institutions and foreign insurance companies, it shall be the duty of the president or treasurer of every company now or hereafter incorporated by or under any law of this commonwealth, and of every company now or hereafter incorporated by any other state or territory of the United States or foreign government, and doing business in this commonwealth, or having capital employed in this commonwealth in the name of any other company or corporation, association or associations, person or persons, or in any other manner, to make report in writing to the auditor general annually, in the month of November, stating specifically the total authorized capital stock of the company, the whole number of shares of stock, the number of shares of stock issued, the par value of each share, the amount paid into the treasury of the company on each share, the amount of capital paid in, the date, amount and rate per centum of each and every dividend made or declared by their respective corporations during the year ending with the first Monday in said month; and in all cases where any such company shall fail to make or declare any dividend upon either its common or

Capital stock to be appraised in certain cases.

preferred stock during the year ending as aforesaid, or in case the dividend or dividends made or declared on either its common or preferred stock during the year ending as aforesaid shall amount to less than six per centum upon the par value of the said common or preferred stock, the treasurer and secretary thereof, after being duly sworn or affirmed to do and perform the same with fidelity, according to the best of their knowledge and belief, shall, between the first and fifteenth days of November of each year in which no dividend has been made or declared as aforesaid, or in which the dividend or dividends made or declared upon either its common or preferred stock amounted to less than six per centum upon the par value of said common or preferred stock, estimate and appraise the capital stock of such company upon which no dividend has been made or declared or upon the par value of which the dividend or dividends made or declared amounted to less than six per centum, at its actual value in cash, not less however than the average price which said stock sold for during said year, and not less than the price or value as indicated or measured by the amount of the dividends made or declared, and when the same shall have been so truly estimated and appraised, they shall forthwith forward to the auditor general a certificate thereof, accompanied by a copy of their said oath or affirmation by them signed and attested by the magistrate or other person qualified to administer the same: *Provided*, That if the auditor general or state treasurer, or either of them, is not satisfied with the valuation so made and returned, they are hereby authorized and empowered to make a valuation thereof, and to settle an account on the valuation so by them made for the taxes, penalties and interest due the commonwealth thereon, and any corporation or company dissatisfied with such settlement may appeal therefrom, in the manner now provided by law for appeals from settlement of accounts by the auditor general and state treasurer.

Auditor general or state treasurer may appraise if dissatisfied.

Appeal authorized.

In case of neglect to report, ten per cent to be added to tax.

SECTION 3. That if the said officers of any such corporation or company shall neglect or refuse to furnish the auditor general, on or before the thirty-first day of December in each and every year, with the report aforesaid, or the report and appraisement as the case may be, as required by the second section of this act, it shall be the duty of the accounting officers of the commonwealth to add ten per centum to the tax of said corporation or company for each and every year for which such report or report and appraisement were not so furnished, which percentage shall be settled and collected with the said tax in the usual manner of settling accounts and collecting such taxes: *Provided*, That if the officers of any such corporation or company shall intentionally fail to comply with the provisions of the second section of this act for three successive years, the auditor general shall report the fact to the governor, who, if he shall be satisfied that such failure was intentional, shall thereupon by proclamation declare the charter of said corporation or company forfeited and its chartered privileges at an end, whereupon the same shall cease, end and be determined.

If neglect for three years, charter to be forfeited.

SECTION 4. That every company or association whatever, now or hereafter incorporated by or under any law of this commonwealth, or now or hereafter incorporated by any other state or territory of the United States or foreign government, and doing business in this commonwealth, or having capital employed in this commonwealth in the name of any other company or corporation, association or associations, person or persons, or in any other manner, except foreign insurance companies, banks and savings institutions, shall be subject to and pay into the treasury of the commonwealth annually, a tax to be computed as follows, namely: If the dividend or dividends made or declared by such company or association as aforesaid, during any year ending with the first Monday of November, amount to six or more than six per centum upon the par value of its capital stock, then the tax to be at the rate of one half mill upon the capital stock for each one per centum of dividend so made or declared; if no dividend be made or declared, or if the dividend or dividends made or declared do not amount to six per centum upon the par value of said capital stock, then the tax to be at the rate of three mills upon each dollar of a valuation of the said capital stock made in accordance with the provisions of the second section of this act; and in case any such company or association shall have more than one kind of capital stock, as for instance common and preferred stock, and upon one of said stocks a dividend or dividends amounting to six or more than six per centum upon the par value thereof has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one half mill for each one per centum of dividend made or declared upon the capital stock, upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto tax shall be charged at the rate of three mills upon each dollar of a valuation, made also in accordance with the provisions of the second section of this act, of the capital stock upon which no dividend was made or declared, or upon the par value of which the dividend or dividends made or declared did not amount to six per centum; and it shall be the duty of the treasurer or other officer having charge of any company or association upon which a tax is imposed by this section of this act, to transmit the amount of said tax to the treasury of the commonwealth, within fifteen days from thirty-first day of December, in each and every year: *Provided*, That whenever such corporation or company shall make any profit and add the same to its sinking fund, without a division thereof amongst its stockholders, the amount of the profit thus added to its sinking fund shall be included in the report required by the second section of this act to be made, and for the purpose of this act the same shall be treated as having been divided amongst the stockholders, and shall subject the capital stock to taxation as a dividend:

Tax on capital stock of corporations.

Tax where dividend amounts to six per cent.

Tax when in cases of less than six per cent. dividend

Where profit added to sinking fund.

Provided however, That said money or any part thereof shall be expressly set apart for the payment of debts.

Limited partnerships engaged in transportation, subject to provisions of preceeding sections.

SECTION 5. That limited partnerships, organized under or pursuant to the laws of this state or of any other state or territory, or of the United States, or under the laws of any foreign state, kingdom, or government, and doing business in this state, and owning, operating, or leasing to or from another corporation, company, or limited partnership, any railroad, canal, pipe line, slack-water navigation, or street passenger railway, or other device for the transportation of freight or passengers, or in any way engaged in the business of transporting freight or passengers, shall be subject to all the provisions of sections one, two, three, and four of this act applying to corporations, and shall pay into the treasury of the commonwealth annually a tax on the capital stock of such limited partnerships, at the same rate, at the same times, and to be ascertained and computed in the same manner, as is therein provided in the cases of corporations.

Other limited partnership subject to preceeding sections.

SECTION 6. That limited partnerships organized under or pursuant to the laws of any other state or territory, or of the United States, or under the laws of any foreign state, kingdom, or government, and doing business in this state, and limited partnerships, that now are or may hereafter be organized under or pursuant to the laws of this state, shall be subject to all the provisions of sections one, two, three, and four of this act applying to corporations, and shall pay into the treasury of the commonwealth annually, a tax on the capital stock of such limited partnership, at the same rate and times, and to be ascertained and computed in the same manner, as is therein provided in the cases of corporations: *Provided*, That for the purposes of this act interests in limited partnerships shall be deemed to be capital stock and taxable accordingly, and any division of profits amongst the owners of such interests shall be taxable as dividends for the purposes of taxation: *Provided further*, That the provisions of this section shall not apply to limited partnerships organized for manufacturing or mercantile purposes.

Interests in limited partnerships to be deemed capital stock for purposes of taxation.

Exceptions.

SECTION 7. That every railroad company, canal company, pipe line company, conduit company, steamboat company, slack-water navigation company, transportation company, street passenger railway company, and every other company or limited partnership, now or hereafter incorporated or organized by or under any law of this commonwealth, or now or hereafter incorporated or organized by any other state, and doing business in this commonwealth, and owning, operating, or leasing to or from another corporation, company, or limited partnership, any railroad, canal, pipe line, slack-water navigation, or street passenger railway, or other device for the transportation of freight or passengers, or in any way engaged in the business of transporting freight or passengers, and every telegraph company incorporated under the laws of this or any other state and doing business in this commonwealth, and every express company, and any palace car and sleeping car company, incorporated or unincorporated, doing business in this commonwealth, shall pay to the

state treasurer for the use of the commonwealth a tax of eight tenths of one per centum upon the gross receipts of said company for tolls and transportation, telegraph business or express business; the said tax shall be paid semi-annually upon the last days of July and January in each year, the first payment to be due on the last day of July, Anno Domini one thousand eight hundred and seventy-nine; and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer or other proper officer of said company or limited partnership, to transmit to the auditor general a statement, under oath or affirmation, of the amount of gross receipts of the said company or limited partnership, derived from all sources during the preceding six months ending on the first days of July and January; and if any such company or limited partnership shall neglect or refuse for a period of thirty days after such tax becomes due, to make said returns or to pay the same, the amount thereof, with an addition of ten per centum thereto, shall be collected for the use of the commonwealth as other taxes are recoverable by law from said companies or limited partnership: *Provided*, That whenever any corporation, company, or limited partnership, liable to a tax on gross receipts under the provisions of this section, possesses and exercises the right to mine or purchase and sell coal, the receipts derived purely from the sale of coal so mined or purchased by said company or limited partnership shall not be taxed, but every such company or limited partnership shall keep an account of the said coal, and in the said account shall charge itself with the transportation thereof, at the same rates as are charged or would be charged by the said company or limited partnershisp for the transportation of similar freight for other companies or individuals, and the sums so charged for transportation shall be returned by the said company or limited partnership to the auditor general, and shall be taxed as a part of the gross receipts of said company or limited partnership: *And provided further*, That in any case where the works of one corporation, company, or limited partnership are leased to and operated by another corporation, company, or limited partnership, the taxes imposed by this section shall be adjusted between the said corporations, companies, or limited partnerships, in accordance with the terms of their respective leases or agreements, but for the payment of the said taxes the commonwealth shall first look to the corporation, company, or limited partnership operating the works, and upon payment by the said company or limited partnership of a tax upon the entire receipts derived from the operation thereof, the corporation, company, or limited partnership from which the said works were leased, shall not be held liable under this section for any tax upon the proportion of said receipts received by it as rental for the use of said works.

Tax on gross receipts of corporations and limited partnerships engaged in transportation.

When payable.

Reports to auditor general.

Penalty for neglect to pay or report.

Certain receipts not taxable.

Cases of leased works.

SECTION 8. That hereafter it shall be the duty of the president, secretary, or other proper officer of each and every insurance company or association, incorporated by or under any law of the commonwealth, except companies doing business upon the purely mutual plan without any capital stock

Insurance companies to make reports of premiums to auditor general.

or accumulated reserve, and purely mutual beneficial associations, whose fund for the benefit of members, their families or heirs, is made up entirely of the weekly or monthly contributions of their members and the accumulated interest thereon, to make report in writing to the auditor general semi-annually, upon the first days of July and January in each year, setting forth the entire amount of premiums received by such company or association during the preceding six months, whether the said premiums were received in money or in the form of notes, credits or any other substitute for money; and every such company or association shall pay into the state treasury, at the dates aforesaid, a tax of eighth tenths of one per centum upon the gross amount of said premium: *Provided*, That said report shall be made under oath or affirmation, and that it shall be the duty of the accounting officers of the commonwealth to add ten per centum to the account of any company or association whose officers shall neglect or refuse for a period of thirty days to make the said report, or to pay into the state treasury the tax imposed by this section.

Tax thereon.

Neglect to report or pay tax.

Coal corporations and limited partnerships to report semi-annually.

SECTION 9. That every corporation or limited partnership, incorporated or organized by or under any law of this commonwealth, or incorporated or organized by or under any law of any other State and doing business in this commonwealth, which possesses the right under its charter to own, purchase or lease coal lands, or to mine, purchase and sell coal, or in any way engages in the business of mining, purchasing or selling coal shall, semi-annually, upon the first days of July and January, in each and every year, make report under oath or affirmation to the auditor general of the number of tons of coal mined during the six months preceding the said first day of July and January, by such company or limited partnership, and also of the number of tons of coal that shall be mined by any unincorporated association, partnership, or individual, under any lease, contract, grant or mining privilege upon the property of which the company or limited partnership making such report is the owner or lessee, or has any mining or coal privileges or interest therein, and also of the number of tons not mined as aforesaid, which shall have been purchased during the same period, by the said company or limited partnership, and shall pay into the treasury of the commonwealth an additional tax upon its corporate franchises, or if a limited partnership, upon its privileges created by or used within this commonwealth, at the rate of three cents upon each and every ton of two thousand two hundred and forty pounds of coal so mined or purchased as aforesaid, until July first, one thousand eight hundred and eighty, and one cent upon each and every ton of two thousand two hundred and forty pounds of coal so mined or purchased as aforesaid, until July first, eighteen hundred and eighty-one, and after the said first day of July, eighteen hundred and eighty-one, the said tax on coal hereinbefore provided shall wholly cease and determine: *Provided*, That the amount of coal consumed in the transaction of its business by any such company or limited part-

Tax on franchises or privileges of same.

Coal consumed by same exempt.

nership, shall not be included in its return, this not to exempt coal manufactured into coke, unless such coke is consumed in the transaction of its business: *And provided further*, That said tax shall not be payable more than once in respect to the same ton of coal, and that where a corporation or limited partnership has heretofore entered into a contract with a corporation or corporations to purchase its coal at a fixed price or basis per ton, the corporation so purchasing the coal shall pay the tax herein imposed: *And provided also*, That if any such company or limited partnership shall neglect or refuse, for a period of thirty days after such tax becomes due, to make said return or to pay the same, the amount thereof, with an addition of ten per centum thereto, shall be collected for the use of the commonwealth as other taxes are recoverable by law from said companies.

But not coal manufactured into coke.

Tax not payable more than once.

Tax to be paid by purchaser of coal in certain cases.

Penalty for neglect.

SECTION 10. That every private banker and broker, and every unincorporated banking and saving institution, express company, palace car company and sleeping car company, and all corporations incorporated by or doing business in this commonwealth, except those liable to a tax on capital stock or gross receipts under the provisions of this act, and banks, trust companies and savings institutions having capital stock, and foreign insurance companies licensed in pursuance of the several acts in relation thereto, shall annually, upon the first Monday of November of each year, make report to the auditor general, under oath or affirmation, setting forth the entire amount of net earnings or income received by said individuals, company or corporation, from all sources during the preceding year; and upon such net earnings or income, the said individual, company or corporation, as the case may be, shall pay into the state treasury for the use of the state, within sixty days thereafter, three per centum upon such annual net earnings or income, in addition to the taxes imposed by the preceding sections of this act; and in case any corporation, company or individual shall neglect or refuse to make the report required by this section to the auditor general, on or before the thirty-first day of December, such corporation, company or individual, shall be liable to a penalty of ten per centum for such neglect, which shall be added to the amount of tax found due in the settlement of their account.

Private bankers and brokers and certain corporations to pay tax on net earnings or income.

Penalty for neglect.

SECTION 11. That one half the taxes imposed by the fourth section of this act, and the revenues derived therefrom, until the first day of November, Anno Domini one thousand eight hundred and eighty, shall be assigned to the sinking fund of this commonwealth, and that after that time the whole of the revenue derived from this source shall be assigned to the sinking fund, and the half of the revenue under the fourth section of this act, until the first day of November, Anno Domini one thousand eight hundred and eighty, and all other taxes imposed by this act, and the revenues derived therefrom shall be applicable to the payment of the ordinary and current expenses of the government.

Assignment of revenue to certain funds.

SECTION 12. That the auditor general and state treasurer, or any agent appointed by them, or either of them, are hereby

Power of accounting officers to examine books and papers.

authorized to examine the books and papers of any corporation, institution, company, or limited partnership made taxable by this act, to verify the accuracy of any return made under the provisions of this or any other act of assembly.

Rate of interest to be paid by delinquents.

SECTION 13. That in the settlement by the auditor general and state treasurer of all accounts for taxes due the commonwealth, they shall charge interest upon the amount of tax or balance or balances found due the commonwealth, at the rate of twelve per centum per annum from thirty days after the time said taxes or balances became due, and payable to the time of the settlement of the same; and all balances due the commonwealth, on account settled by the auditor general and state treasurer, shall bear interest from sixty days after date of settlement, at the rate of twelve per centum per annum until the same are paid, and any judgment recovered thereon shall bear interest at the rate of twelve per centum per annum until paid; and the payment of interest as aforesaid shall not relieve any corporation from any of the penalties or commissions prescribed by law for neglect or refusal to furnish reports to the auditor general, or to pay any claim due to the commonwealth from such corporation: *Provided*, That the auditor general shall first have sent to such corporation a statement of amount due.

Taxes to be a lien.

SECTION 14. That all taxes imposed by this act shall be a lien upon the franchises and property, both real and personal, of corporations and limited partnerships, from the time the said taxes are due and payable; and whenever the franchises or property of a corporation or limited partnership shall be sold at a judicial sale, all taxes due the commonwealth shall first be allowed and paid out of the proceeds of such sale, before any judgments, mortgages, or other claims which shall be entered of record or become a lien after the passage of this act.

No corporation or limited partnership to be dissolved until taxes are paid.

SECTION 15. That no corporation or limited partnership made taxable by this act shall hereafter be dissolved by the decree of any court of common pleas, until all taxes due the commonwealth have been fully paid into the state treasury, and the certificate of the auditor general, state treasurer, and attorney general to this effect filed in the proper court, with the proceedings for dissolution.

Foreign corporations in certain cases to pay license tax.

SECTION 16. That from and after the first day of July, Anno Domini one thousand eight hundred and seventy-nine, no foreign corporation, except foreign insurance companies, which does not invest and use its capital in this commonwealth, shall have an office or offices in this commonwealth for the use of its officers, stockholders, agents, or employés, unless it shall first have obtained from the auditor general an annual license so to do, and for said license every such corporation shall pay into the state treasury, for the use of the commonwealth, annually, one fourth of a mill on each dollar of capital stock which said company is authorized to have, and the auditor general shall not issue a license to any corporation until said license fee shall have been paid. The auditor general and state treasurer are hereby authorized to settle and have collected an account against any company

violating the provisions of this section, for the amount of such license fee, together with a penalty of fifty per centum for failure to pay the same: *Provided*, That no license shall be necessary for any corporation paying a tax under any previous section of this act, or whose capital stock or a majority thereof is owned or controlled by a corporation of this state which does pay a tax under any previous section of this act.

No license necessary in certain cases.

SECTION 17. That all mortgages, money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment, also all articles of agreement and accounts bearing interest, owned or possessed by any person or persons whatsoever, (except notes or bills for work or labor done, and all obligations given to banks for money loaned, and bank notes,) also all shares of stock in any bank, banking or savings institution, or company now or hereafter incorporated by or in pursuance of any law of this commonwealth, and all public loans or stocks whatsoever, except those issued by this commonwealth or the United States, and all money loaned or invested on interest in any other state, and all other moneyed capital in the hands of individual citizens of the state shall be and are hereby made taxable for state purposes at the rate of four mills on every dollar of the value thereof annually: *Provided*, That all mortgages, judgments, recognizances, and moneys due or owing upon articles of agreement for the sale of real estate shall, after the passage of this act, be exempt from all taxation, except for state purposes; and all corporations paying interest on loans hereby taxed for state purposes only, shall deduct the said tax from the said interest and pay the same into the state treasury; and in case any bank or savings institution incorporated by this state, or any national bank, elect to collect annually from the shareholders thereof a tax of six tenths of one per centum upon the par value of all the shares of said bank or savings institution, and pay the same in the state treasury on or before the twentieth day of June in every year, the shares, capital, and profits of such bank shall be exempt from all other taxation under the laws of this commonwealth; and the law regulating the compensation of county treasurers for receiving moneys for the use of the commonwealth, and paying over the same, is hereby extended to the cashier of said bank and savings institution; and the office of assessor provided for under the second section of the act entitled "An act to increase the revenues of the commonwealth by taxation of the shares of the stock of national banks," approved the twelfth day of April, Anno Domini one thousand eight hundred and sixty-seven, be and are hereby abolished; the shares of stock of such banks or savings institution shall hereafter be assessed as follows: It shall be the duty of the president or cashier of any national bank, banking, or savings institution, incorporated under the laws of this commonwealth or of the United States, which are taxable under this act, to make report, in writing, to the auditor general, on or before the first day of March of each year, stating, specifically, the amount of capital stock, and the amount paid in, a full and complete list of the shareholders of each bank or

Moneys at interest and bank stock taxed for state purposes.

Corporations paying interest on loans to deduct tax and pay same into state treasury.

Banks may elect to collect from shareholders and pay tax, and in such case shares exempt from all other taxation.

Office of bank assessor abolished.

How bank shares to be assessed.

savings institution, with their residence, and the number and par value of shares of stock held by each person respectively, value of said stock in the market where such bank is located, during the year ending with the first day of March, which said report shall be made under oath of the said president or cashier, before some officer qualified to administer the same, and the said president or cashier shall also furnish a duplicate of the said report, in writing, under oath, to the commissioners of the proper city or county in which such bank or institution is located. The auditor general shall have power to adjust such assessments, by inquiring into the value of such stock, and either abate or increase the value of the same, as may be just and proper; if the said bank officers shall neglect or refuse to furnish the auditor general, on or before the first day of March in each and every year, with the report aforesaid, it shall be the duty of the accounting officers of the commonwealth to add ten per centum to the tax of said corporation, for each and every year for which percentage shall be settled and collected with the said taxes in the usual manner of settling accounts and collecting taxes.

Auditor general empowered to adjust assessments.

Penalty in case of neglect.

Repeal of limitation of state tax to be raised on personal property.

That the limitation of the amount of state tax to be raised on personal property to the sum of five hundred thousand dollars, contained in the third section of the act of twenty-fourth of May, one thousand eight hundred and seventy-eight, entitled "An act defining the powers and extending the duties of the board of revenue commissioners," in words as follows: "Which tax shall not, as finally adjusted, exceed in the aggregate the sum of five hundred thousand dollars," be and the same is hereby repealed.

Laws inconsistent herewith repealed.

SECTION 18. That this shall go into effect immediately, and that all laws or parts of laws inconsistent herewith, or which are hereby substantially reënacted, be and the same are hereby repealed, saving, reserving, and excepting unto the commonwealth the right to collect any taxes accrued or accruing under the said laws or parts of laws and sections, or any of them, prior to the date of the approval of this act: *Provided however*, That taxes shall not be collected for the same period of time under any such repealed law, and under any substantial reënactment of the same herein contained.

HENRY M. LONG,
Speaker of the House of Representatives,

CHARLES W. STONE,
President of the Senate.

APPROVED—The 7th day of June, Anno Domini, 1879.
HENRY M. HOYT.

Act of June 10, 1881.

M. E. OLMSTED,
Attorney-at-Law,
HARRISBURG PA.

Special attention paid to interests affected by the tax laws of Pennsylvania.

A SUPPLEMENT

To an act, entitled "An act to provide revenue by taxation," approved the seventh of June, one thousand eight hundred and seventy-nine.

A SUPPLEMENT

To an act, entitled "An act to provide revenue by taxation," approved the seventh of June, one thousand eight hundred and seventy-nine.

Moneys at interest taxable for state purposes.

Also bank shares.

Mortgages, &c., exempt from local taxation.

Loans of building associations taxed.

Corporations paying interest on loans to deduct tax and pay some into state treasury.

Penalty for neglect to report or pay tax.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same*, That all mortgages, moneys owing by solvent debtors, whether by promissory note, or penal or single bill bond or judgment, also all articles of agreement and accounts bearing interest, owned or possessed by any person or persons whatsoever, except notes or bills for work or labor done, and all obligations given to banks for money loaned and bank notes, also all shares of stock in any bank, banking or saving institution or company now or hereafter incorporated by or in pursuance of any law of this commonwealth, and all public loans or stocks whatsoever, except those issued by this commonwealth or the United States, and all money loaned or invested in any other state, and all other moneyed capital in the hands of individual citizens of the state, shall be and are hereby taxable for state purposes, at the rate of four mills on the dollar of the value thereof annually: *Provided*, That all mortgages, judgments, and recognizances whatsoever, and all moneys due or owing upon articles of agreement for the sale of real estate shall, after the passage of this act, be exempt from all taxation except for State purposes: *Provided*, The provisions of this act shall not apply to building and loan associations: *Provided, however*, That moneys loaned by building and loan associations shall be subject to tax the same as money loaned by individuals.

SECTION 2. That hereafter all corporations paying interest on a loan or loans which are taxable for state purposes, whether secured by bond, mortgage, recognizance, or otherwise, shall report annually, in the month of November, to the auditor general, the amount of such indebtedness owned by residents of this commonwealth, as nearly as can be ascertained, under oath of the president or treasurer, and shall pay into the state treasury four mills upon every dollar of such indebtedness so returned and owned by residents as aforesaid, within fifteen days after the thirty-first of December in each year; and for every failure to report or pay as aforesaid, the auditor general shall add ten per centum as a penalty to the said tax, and the said tax may be deducted by the corporation paying the same from the interest on such indebtedness, whereupon such indebtedness, whether secured by bond, mortgage, judgment, or otherwise, shall be exempt from other taxation in the hands of the holders thereof.

Banks may elect to collect from shareholders and pay tax of six mills, and in such case shares exempt from all other taxation.

SECTION 3. In case any bank or savings institution incorporated by this state or the United States, shall elect to collect annually from the shareholders thereof a tax of six-tenths of one per centum upon the par value of all the shares of said bank or savings institution, and pay the same into the state treasury on or before the first day of March in each year, the shares, and so much of the capital and profits of such bank as shall not be invested in real estate, shall be exempt from all other taxation under the laws of this commonwealth.

Banks not so electing to report shareholders to auditor general and make valuation of shares.

SECTION 4. It shall be the duty of the president or cashier of every bank or savings institution incorporated under the laws of this commonwealth, or of the United States, and doing business in this commonwealth, failing to pay in the six mill tax as aforesaid, to make report in writing to the auditor general on or before the twentieth day of June, in each year, stating specifically the amount of capital stock, and the amount paid in, a full and complete list of the shareholders of such bank or savings institution, with their residence and number, and par value of shares of stock held by each person respectively, value of said stock in the market where such bank is located during the year ending with the twentieth of June, which said report shall be verified by the oath of the president or cashier, taken before some officer authorized to administer oaths, and the said president or cashier shall also furnish a duplicate original of said report to the commissioners of the proper city or county in which such bank or institution is located, to be used by them for the purpose of assessing all taxes against said shareholders. The auditor general shall have power to inquire into the value of such stock, and either abate or increase the assessment as may be just. If the said bank officer shall neglect or refuse to furnish the reports aforesaid as above required, it shall be the duty of the auditor general to require the said officers to appear before him in person with the books and accounts of the said bank or savings institution for interrogation and examination, and the auditor general shall have power to issue subpœnas and attachments, to be served by any constable or sheriff, and to compel the attendance of such bank officer and the production of such books and papers as he may deem necessary, to make a correct list of the shareholders, with their residences, and the number and value of their shares, and the said auditor general may settle an account in the usual mode against the individual shareholders for the state tax of four mills, and proceed to collect the same according to law; and he shall also transmit the lists and assessments made by him to the commissioners of the proper cities and counties, to be used by them in assessing taxes against the said shareholders.

Auditor general may abate or increase assessment.

Powers of auditor general in case bank officers fail to report.

Accounts to be settled against individual shareholders.

Assignment of revenue to certain funds.

SECTION 5. That one half the taxes imposed by the fourth section of the act to which this is a supplement, and the revenues derived therefrom, shall be assigned to the sinking fund of this commonwealth, and all other taxes imposed by the said act, and the revenue derived therefrom, shall be applicable to the payment of the ordinary and current expenses of the government.

A SUPPLEMENT

To an act, entitled "An act to provide revenue by taxation," approved the seventh of June, one thousand eight hundred and seventy-nine.

Moneys at interest taxable for state purposes.

Also bank shares.

Mortgages, &c., exempt from local taxation.

Loans of building associations taxed.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same*, That all mortgages, moneys owing by solvent debtors, whether by promissory note, or penal or single bill bond or judgment, also all articles of agreement and accounts bearing interest, owned or possessed by any person or persons whatsoever, except notes or bills for work or labor done, and all obligations given to banks for money loaned and bank notes, also all shares of stock in any bank, banking or saving institution or company now or hereafter incorporated by or in pursuance of any law of this commonwealth, and all public loans or stocks whatsoever, except those issued by this commonwealth or the United States, and all money loaned or invested in any other state, and all other moneyed capital in the hands of individual citizens of the state, shall be and are hereby taxable for state purposes, at the rate of four mills on the dollar of the value thereof annually: *Provided*, That all mortgages, judgments, and recognizances whatsoever, and all moneys due or owing upon articles of agreement for the sale of real estate shall, after the passage of this act, be exempt from all taxation except for State purposes: *Provided*, The provisions of this act shall not apply to building and loan associations: *Provided, however*, That moneys loaned by building and loan associations shall be subject to tax the same as money loaned by individuals.

Corporations paying interest on loans to deduct tax and pay some into state treasury.

Penalty for neglect to report or pay tax.

SECTION 2. That hereafter all corporations paying interest on a loan or loans which are taxable for state purposes, whether secured by bond, mortgage, recognizance, or otherwise, shall report annually, in the month of November, to the auditor general, the amount of such indebtedness owned by residents of this commonwealth, as nearly as can be ascertained, under oath of the president or treasurer, and shall pay into the state treasury four mills upon every dollar of such indebtedness so returned and owned by residents as aforesaid, within fifteen days after the thirty-first of December in each year; and for every failure to report or pay as aforesaid, the auditor general shall add ten per centum as a penalty to the said tax, and the said tax may be deducted by the corporation paying the same from the interest on such indebtedness, whereupon such indebtedness, whether secured by bond, mortgage, judgment, or otherwise, shall be exempt from other taxation in the hands of the holders thereof.

Banks may elect to collect from shareholders and pay tax of six mills, and in such case shares exempt from all other taxation.

SECTION 3. In case any bank or savings institution incorporated by this state or the United States, shall elect to collect annually from the shareholders thereof a tax of six-tenths of one per centum upon the par value of all the shares of said bank or savings institution, and pay the same into the state treasury on or before the first day of March in each year, the shares, and so much of the capital and profits of such bank as shall not be invested in real estate, shall be exempt from all other taxation under the laws of this commonwealth.

Banks not so electing to report shareholders to auditor general and make valuation of shares.

SECTION 4. It shall be the duty of the president or cashier of every bank or savings institution incorporated under the laws of this commonwealth, or of the United States, and doing business in this commonwealth, failing to pay in the six mill tax as aforesaid, to make report in writing to the auditor general on or before the twentieth day of June, in each year, stating specifically the amount of capital stock, and the amount paid in, a full and complete list of the shareholders of such bank or savings institution, with their residence and number, and par value of shares of stock held by each person respectively, value of said stock in the market where such bank is located during the year ending with the twentieth of June, which said report shall be verified by the oath of the president or cashier, taken before some officer authorized to administer oaths, and the said president or cashier shall also furnish a duplicate original of said report to the commissioners of the proper city or county in which such bank or institution is located, to be used by them for the purpose of assessing all taxes against said shareholders. The auditor general shall have power to inquire into the value of such stock, and either abate or increase the assessment as may be just. If the said bank officer shall neglect or refuse to furnish the reports aforesaid as above required, it shall be the duty of the auditor general to require the said officers to appear before him in person with the books and accounts of the said bank or savings institution for interrogation and examination, and the auditor general shall have power to issue subpœnas and attachments, to be served by any constable or sheriff, and to compel the attendance of such bank officer and the production of such books and papers as he may deem necessary, to make a correct list of the shareholders, with their residences, and the number and value of their shares, and the said auditor general may settle an account in the usual mode against the individual shareholders for the state tax of four mills, and proceed to collect the same according to law; and he shall also transmit the lists and assessments made by him to the commissioners of the proper cities and counties, to be used by them in assessing taxes against the said shareholders.

Auditor general may abate or increase assessment.

Powers of auditor general in case bank officers fail to report.

Accounts to be settled against individual shareholders.

Assignment of revenue to certain funds.

SECTION 5. That one half the taxes imposed by the fourth section of the act to which this is a supplement, and the revenues derived therefrom, shall be assigned to the sinking fund of this commonwealth, and all other taxes imposed by the said act, and the revenue derived therefrom, shall be applicable to the payment of the ordinary and current expenses of the government.

Office of bank assessor abolished.

SECTION 6. The officer of assessor provided for under the second section of the act entitled "An act to increase the revenue of the commonwealth by taxation of the shares of the stock of the national banks," approved April twelfth, one thousand eight hundred and sixty-seven, is hereby abolished. That

Repeal of limitation of state tax to be raised on personal property.

the limitation of the amount of state tax to be raised on personal property to the sum of five hundred thousand dollars, contained in the third section of the act of twenty-fourth of May, one thousand eight hundred and seventy-eight, entitled "An act defining the powers and extending the duties of the board of revenue commissioners," in words following: "Which tax shall not finally adjusted exceed in the aggregate the sum of five hundred thousand dollars," be and the same is hereby repealed. The eleventh and seventeenth sections of the act to

Inconsistent acts repealed.

which this is a supplement, are hereby repealed, saving, reserving, and excepting unto the commonwealth the right to collect any taxes accrued or accruing under said sections prior to the date of the approval of this act.

Insurance companies to pay back taxes and be exempt from tax on premiums received in other states, after January 1, 1881.

SECTION 7. That all insurance companies which shall, within thirty days after the approval of this act, pay into the treasury of this commonwealth the amount of money claimed by the commonwealth for taxes upon their gross premiums for the period of time between the twentieth day of March, Anno Domini one thousand eight hundred and seventy-seven, and the first day of January, Anno Domini one thousand eight hundred and eighty-one, together with interest upon the same, shall be liable, from and after the first day of January, Anno Domini one thousand eight hundred and eighty-one, during the continuance of this act, to no taxes upon their premiums, except upon such as were or shall be received from business transacted within this commonwealth."

BEN. L. HEWIT,
Speaker of the House of Representatives.
W. I. NEWELL,
President pro tem. of the Senate.

APPROVED—The 10th day of June, Anno Domini one thousand eight hundred and eighty-one.

HENRY M. HOYT.

OFFICE OF THE SECRETARY OF THE COMMONWEALTH,
HARRISBURG, *June 11, A. D. 1881.*

Pennsylvania, ss:

[L. S.]

I do hereby certify that the foregoing and annexed is a full, true, and correct copy of the original supplement to an act entitled "An act to provide revenue by taxation," as the same remains on file in this office.

In testimony whereof, I have hereunto set my hand, and caused the seal of the secretary's office to be affixed, the day and year above written.

J. R. McAFEE,
Deputy Secretary of the Commonwealth.

Compliments of
M. E. OLMSTED,
ATTORNEY-AT-LAW,
HARRISBURG, PA.

THE GENERAL REVENUE ACT OF 1885.

SECTION 6. That effect of assessors provided for under the second section of the act entitled "An act to increase the revenue of the commonwealth by taxation of the shares of the stock of National banks," approved April twelfth, one thousand eight hundred and sixty-seven, is hereby abolished. That the limitation of the amount of state tax to be raised on personal property to the sum of five hundred thousand dollars, contained in the third section of the act of twenty-fourth of May, one thousand eight hundred and seventy-eight, entitled "An act defining the powers and extending the duties of the board of revenue commissioners," in words following: "Which tax shall not finally adjust except in the aggregate the sum of five hundred thousand dollars," be and the same is hereby repealed. The eleventh and seventeenth sections of the act to which this is a supplement are hereby repealed, saving, reserving, and excepting unto the commonwealth the right to collect any taxes accrued or accruing under said sections prior to the date of the approval of this act.

SECTION 7. That all insurance companies which shall within thirty days after the approval of this act, pay into the treasury of this commonwealth the amount of money claimed by the commonwealth for taxes upon their gross premiums for the period of time between the twentieth day of March, Anno Domini one thousand eight hundred and seventy-seven, and the first day of January, Anno Domini one thousand eight hundred and eighty-one, together with interest upon the same shall be liable, from and after the first day of January, Anno Domini one thousand eight hundred and eighty-one, during the continuance of this act, to no taxes upon their premiums, except upon such as were or shall be received from business transacted within this commonwealth.

BEN. L. HEWIT,
Speaker of the House of Representatives.
W. J. NEWELL,
President pro tem. of the Senate.

APPROVED—The 16th day of June, Anno Domini one thousand eight hundred and eighty-one.

HENRY M. HOYT.

OFFICE OF THE SECRETARY OF THE COMMONWEALTH,
HARRISBURG, *June 21, A. D. 1881.*

Pennsylvania, ss:

[L. S.]

I do hereby certify that the foregoing and annexed is a full, true, and correct copy of the original supplement to an act entitled "An act to provide revenue by taxation," as the same remains on file in this office.

In testimony whereof, I have hereunto set my hand, and caused the seal of the secretary's office to be affixed, the day and year above written.

J. R. McAFEE,
Deputy Secretary of the Commonwealth.

Compliments of
M. E. OLMSTED,
Attorney-at-Law,
Harrisburg, Pa.

The General Revenue Act of 1885.

A FURTHER SUPPLEMENT

To an act entitled "An act to provide revenue by taxation," approved the seventh of June, one thousand eight hundred and seventy-nine.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That all mortgages, money owing by solvent debtors, whether by promissory note or penal or single bill, bond, or judgment; also, all articles of agreement and accounts bearing interest, owned, or possessed by any person or persons whatsoever, except notes or bills for work or labor done, and all obligations given to banks for money loaned and bank notes, and all public loan or stocks whatsoever, except those issued by this commonwealth or the United States, and all money loaned or invested in any other state, and all other moneyed capital in the hands of individual citizens of the state, shall be, and are hereby, taxable for state purposes at the rate of three mills on the dollar of the value thereof annually: *Provided,* That the same shall, after the passage of this act, be exempt from all taxation except for state purposes: *Provided,* The provisions of this act shall not apply to building and loan associations.

Mortgages and other moneyed capital taxed three mills for State purposes.

SECTION 2. All shares of stock in any bank, banking, or saving institution or company, safe deposit, guarantee, surety and real estate title insurance, or trust company, now or hereafter incorporated by or in pursuance of any law of this commonwealth or of the United States, shall be, and are hereby, made taxable for state purposes at the rate of three mills on the dollar of the value thereof annually.

Shares of stock in banks and certain other corportions taxed three mills for State purposes.

SECTION 3. In case any bank or savings institution, safe deposit, guarantee, surety and real estate title insurance, or trust company, incorporated by this state under the laws of any other state or the United States, shall elect to collect annually from the shareholders thereof a tax of six tenths of one per centum upon the par value of all the shares of said bank or savings institution, and pay the same into the state treasury on or before the first day of March in each year, the shares, and so much of the capital and profits of such bank as

Banks and certain other corporations may elect to pay six mills, and be exempt from all other taxation.

shall not be invested in real estate, shall be exempt from all other taxation under the laws of this commonwealth.

Treasurers of corporations to assess tax on bonds, &c.

SECTION 4. That hereafter it shall be the duty of the treasurer of each private corporation, incorporated by or under the laws of this commonwealth, or the laws of any other state or of the United States, and doing business in this commonwealth, upon the payment of any interest on any scrip, bond, or certificate of indebtedness issued by said corporation to residents of this commonwealth, and held by them, to assess the tax imposed and provided for state purposes upon the nominal value of each and every said evidence of death, and to report on oath annually on the first Monday of November to the auditor general the amount of indebtedness of the corporation owned by residents of this commonwealth, as nearly as the same can be ascertained, and it shall be his further duty to deduct three mills on every dollar of the interest paid, as aforesaid, and return the same into the state treasury within fifteen days after the thirty-first day of December, in each year, and his compensation for his services shall be the same that city and borough treasurers receive for similar services, and for every failure to assess and pay said tax, and make report as aforesaid, the auditor general shall add ten per centum, as a penalty, to the amount of the tax n payment of said tax by a corporation, the bonds, certificates, or other evidences of indebtedness issued by it shall be exempt from all other taxation in the hands of the holders of the same.

To report to Auditor General.

When paying interest to deduct tax and return it into the State Treasury.

Penalty for failure.

Officers of banks and certain other corporations to report shareholders to Auditor General.

SECTION 5. It shall be the duty of the president or cashier of every bank or savings institution, safe deposit, guarantee, surety, and real estate, title insurance, or trust company incorporated under the laws of this commonwealth, or of the United States, and doing business in this commonwealth, failing to pay in the six mill tax as aforesaid, to make report in writing to the auditor general on or before the twentieth day of June in each year, stating specifically the amount of capital stock, and the amount paid in. A full and complete list of the shareholders of such bank or savings institution, with their residence, and number and par value of shares of stock held by each person respectively; value of said stock in the market where such bank is located during the year ending with twentieth day of June, which said report shall be verified by the oath of the president or cashier, taken before some officer authorized to administer oaths, and the said president or cashier shall also furnish a duplicate original of said report to the commissioners of the proper city or county, in which such bank or institution is located, to be used by them for the purpose of assessing all taxes against said shareholders. The auditor general shall have power to inquire into the value of such stock, and either abate or increase the assessment, as may be just. If the said bank officers shall neglect or refuse to furnish the reports aforesaid as above

Duplicate report to county commissioners.

Auditor General to inquire into value of shares.

required, it shall be the duty of the auditor general to required said officers to appear before him in person, with the books and accounts of the said bank or savings institution, for interrogation and examination, and the auditor general shall have power to issue subpœnas and attachments, to be served by any constable or sheriff, and to compel the attendance of such bank officer, and the production of such books and papers as he may deem necessary to make a correct list of the shareholders, with their residence and the number and value of their shares, and the said auditor general may settle an account in the usual mode against the individual shareholders for the state tax of three mills, and proceed to collect the same according to law, and he shall also transmit the lists and assessments made by him to the commissioners of the proper cities and counties, to be used by them in assessing taxes against the shareholders. Any president or cashier of any bank or savings institution neglecting or refusing to furnish the said report, or to do and perform any of the matters and things required of him by this act, he shall be liable to a penalty of one thousand dollars, and any bank or savings institution refusing to permit the said president or cashier to make the said reports, or to produce its books as above required, shall be liable to a like penalty of one thousand dollars, and the auditor general may settle an account against the president and cashier so neglecting or refusing to make report as aforesaid, or against the bank or savings institution refusing to permit the making of said report, or the production of its books and papers as aforesaid, and proceed for the collection of said penalties, for the use of the commonwealth, in the same manner as taxes are now recoverable by law.

Duty of Auditor General in case of failure to report.

State tax collected from individual shareholders.

Also city and county taxes.

Penalty for failure to report.

SECTION 6. The board of revision in the city of Philadelphia and the commissioners of the other counties of the Commonwealth, shall furnish the assessors of the several townships and boroughs of the respective counties with proper blanks, the form of which to be prescribed by the Auditor General, and the several assessors shall furnish the same to each taxable person, upon which blank the taxable person shall make return of the aggregate amount of all matters owned by him made taxable by this act, as well as of all other personal property taxable for State purposes: *Provided*, That the taxable person shall not include in said return the obligations of public or private corporations, the tax upon which is required by law to be collected from the holder of such obligations and paid into the State Treasury by the corporation.

Blank forms for assessors.

Each taxable to make return of money at interest.

Bonds of Pennsylvania corporations not to be included in return.

SECTION 7. It shall be the duty of every taxable person to make the return prescribed in the preceding section of this act within ten days after being required so to do, with his or her affidavit thereto attached, made and subscribed before the proper assessor, that the return is true and correct to the best of his or her knowl-

Return to be made under oath.

edge and belief. Any person who shall willfully and corruptly make a false and fraudulent return, shall be guilty of willful and corrupt perjury.

Assessors to administer oaths.

SECTION 8. The several assessors are hereby authorized and required to administer the oaths and affirmations required by this act to all taxable persons without charge.

Taxable failing to report, assessors to estimate amount and commissioners to add fifty per cent.

SECTION 9. Upon the refusal or failure of any taxable person to make a return, as required by this act, it shall be the duty of the assessor to make a return for such taxable person, estimating the amount from the best information at his command, to which estimated return the proper county commissioners or boards of revision shall add fifty per centum, and the aggregate amount so obtained shall be the basis for taxation: *Provided*, That if such taxable person, on or before the day fixed for appeals from assessments, shall present reasons, under oath, satisfactory to the proper county commissioners or boards of revision, excusing the failure to make a return, and shall then make such return, as should have been made to the assessor, the proper county commissioners or boards of revision shall substitute the taxable person's return for that returned by the assessor, to have like effect as if no failure had occurred.

Suitable persons to be appointed to examine dockets of recorder and prothonotary and report mortgages and judgments to county commissioners.

SECTION 10. That it shall be the duty of county commissioners or the board of revision of taxes in counties or cities co-extensive with counties, forthwith, upon the passage of this act, to appoint some suitable person, whose duty it shall be to make an examination of the dockets of the recorder of deeds, mortgages, and so forth, from the year one thousand eight hundred and fifty-two, if the county shall have been in existence so long; if not, from the date of organization of the county to the present time, and the dockets of the prothonotary or clerk of common pleas, from the year one thousand eight hundred and eighty to the present time, and make report to the said county commissioners or board of revision of taxes the number and amount of unsatisfied mortgages, bonds, and judgments, and agreements for the payment of money, and the names of the parties thereto, which information shall be filed of record in the office of the said county commissioners or board of revision of taxes.

Recorder of deeds to keep separate record and file daily in county commissioners' office.

SECTION 11. That from and after the passage of this act, it shall be the duty of the recorder of deeds, mortgages, and other instruments of writing, in each and every county and city co-extensive with a county in this Commonwealth, to keep a daily record, separate and apart from all other records, of every mortgage or article of agreement given to secure the payment of money entered in his office for recording, which said record shall set forth the following information, to wit: The date of the mortgage or agreement, names of the parties thereto, the just sum of money secured, and the date, or several dates, when the said sum, or portion of

said sum, shall become due and payable, and also the number of mortgages and agreements, together with the amount of same and the names of the parties thereto, which shall have been that day satisfied of his record, and it shall be the further duty of the recorder, at the close of every business day, to file the aforesaid daily record of mortgages, et cetera, in the commissioners' office or with board of revision of taxes of the proper county or city.

Prothonotary to keep separate record and file daily in county commissioners' office.

SECTION 12. That it shall be the duty of the prothonotary or clerk of the court of common pleas in each and every county or city co-extensive with counties in this Commonwealth forthwith upon the passage of this act, to keep a daily record, separate and apart from all other records, of every single bill, bond, judgment, or other instrument securing a debt, entered of record in his office, which daily record shall set forth the following information, to wit: The date of the instrument, the names of the plaintiff and defendant, the just sum secured, and the date or several dates when the said sum or portion of the same shall become due and payable, with the further information whether any of said bonds or judgments are accompanied with mortgages, and also the number of every single bill, bond, judgment, or other instrument securing a debt, together with the amount of same and the names of the plaintiff and defendant thereto, which shall have been that day satisfied; and it shall be the further duty of the prothonotary or clerk of the court of common pleas to file the aforesaid daily record of bills and so forth in the commissioners' office or with the board of revision of taxes of the proper county or city.

Commissioners to report to commissioners of other counties in certain cases.

SECTION 13. That it shall be the further duty of the county commissioners or board of revision of taxes upon obtaining record of the existence within any county or city co-extensive with a county of said mortgages and other obligations that shall be owned by a person residing within this Commonwealth and not resident within said county, to transmit a certified statement of said record of the county commissioners or board of revision of taxes of the proper city or county wherein said person is domiciled, and also to further transmit to said commissioners or board of revision of taxes a certified statement whenever it shall appear from the record that said mortgages and other obligations are satisfied, which upon its receipts shall be filed of record by the county commissioners or board of revision of taxes.

Commissioners to furnish statements to assessors.

SECTION 14. That it shall be the further duty of the county commissioners or the board of revision of taxes of the proper city or county upon the receipt of the daily records from the offices of the recorder or prothonotary or clerk, to file the same in their office, and on or before the time of making the annual or triennial assessment in any year, to prepare from said records statements showing the number and amount of said mortgages and all

other obligations, and names of the parties thereto in each township or ward in the county, which said statement shall be delivered to the assessor or assessors of each township or ward, respectively, before said officers shall enter upon the discharge of their proper duties.

Assessors to compare personal returns with statements received from commissioners.

SECTION 15. That it shall be the duty of the assessor or assessors in making up their valuations of money at interest, in their respective districts, to compare the personal return made by each person with the statement furnished them by the county commissioners or board of revision of taxes, and if the amount of said mortgages or other obligations as contained in said statement shall exceed the amount set forth in the personal return of any person, to note the fact and make return of the same to the commissioners or board of revision of taxes of the proper city or county.

County commissioners may raise valuation in certain cases.

SECTION 16. That it shall be the further duty of the county commissioners or board of revision of taxes, upon the returns made to them by the assessors of the several townships and wards, in all cases where it shall appear on proving the record that any person has returned a less amount of moneys at interest than appears from the records in possession of the commissioners or board of revision of taxes, thereupon to raise the valuation of the property of said person to the amount set forth in said records, and forthwith to notify the person interested of the said increase of valuation, and that the same is subject to be appealed from at the same time and in the same manner as the original assessment.

Compensation allowed for obtaining record required by section 10.

SECTION 17. That it shall be the duty of the State Treasurer and Auditor General, in the settlement of the State tax account for the year one thousand eight hundred and eighty-six, to allow, in addition to the compensation for collection of said tax now authorized by law, a further compensation of five per centum, or such part thereof as may be necessary, and to be proven by vouchers presented to and approved by the board of revenue commissioners, which amount shall be applied by the county commissioners or board of revision of taxes in payment of the expenses incurred in obtaining the record set forth in section ten of this act: *Provided*, That if the sum of five per centum shall not be deemed by the State Treasurer and Auditor General a just and sufficient compensation for the furnishing of such records, that in lieu thereof they may allow in counties of less than forty-five thousand inhabitants a sum not to exceed five hundred dollars; in counties of less than eighty thousand and more than forty-five thousand inhabitants, a sum not to exceed eight hundred dollars, and in counties of less than one hundred and thirty thousand and more than eighty thousand inhabitants, a sum not to exceed fifteen hundred dollars; in counties of less than four hundred thousand and more than one hundred and thirty thousand inhabitants, a sum not exceeding two thousand dollars; in counties having more

than four hundred thousand inhabitants, a sum not exceeding twenty-five hundred dollars.

Officers failing to perform duties guilty of misdemeanor.

SECTION 18. Any failure on the part of county commissioners, boards of revision of taxes, ward and township assessors, recorders of deeds, prothonotaries, and clerks of courts to carry out the duties imposed upon them by the several sections of this act, shall be deemed a misdemeanor, and upon conviction thereof, the person or persons so failing to comply shall be sentenced to a fine of not less than five hundred dollars.

Auditor General to furnish necessary books and blanks.

SECTION 19. That the Auditor General shall furnish to the county commissioners or boards of revision in counties or cities co-extensive with counties all necessary books, blanks, notices, and papers to carry this act into effect.

Manufacturing companies exempted from taxation.

SECTION 20. That the taxes laid upon manufacturing corporations by and under the revenue laws of this Commonwealth be, and the same are hereby, abolished as to such corporations, and the laws under which such taxes are laid and collected be, and the same are hereby, repealed, so far, and so far only, as they apply to and effect manufacturing corporations: *Provided*, That the provisions of this act shall not apply to corporations engaged in the manufacture of malt, spiritous, or vinous liquors, or in the manufacture of gas: *Provided*, This act shall go into effect immediately, reserving and excepting unto the Commonwealth the right to collect any taxes accrued under the laws repealed by this act.

SECTION 21. All acts or parts of acts inconsistent herewith be and the same are hereby repealed.

JAMES L. GRAHAM,
Speaker of the House of Representatives.

AMOS H. MYLIN,
President pro tem. of the Senate.

APPROVED—The 30 day of June, Anno Domini 1885.

ROBT. E. PATTISON.